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JANE HODGSON, M.D., *et al.*,

Petitioners,

—v.—

THE STATE OF MINNESOTA, *et al.*,

Respondents.

THE STATE OF MINNESOTA, *et al.*,

Cross-Petitioners,

—v.—

JANE HODGSON, M.D., *et al.*,

Cross-Respondents.

[illegible] CERTIORARI TO THE UNITED STATES
[illegible] APPEALS FOR THE EIGHTH CIRCUIT

[illegible] FOR CROSS-RESPONDENTS

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QUESTION PRESENTED

Whether the Eighth Circuit was correct in holding unconstitutional a criminal statute requiring that both biological parents of minors be notified at least forty-eight hours prior to any abortion procedure with no opportunity for mature minors (including emancipated or married minors, and minors with children), or minors whose best interests require confidentiality (including sexually abused minors) to avoid such notice?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

Nos. 88-1125 and 88-1309

JANE HODGSON, M.D., *et al.*,

Petitioners,

—v.—

THE STATE OF MINNESOTA, *et al.*,

Respondents.

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Cross-Petitioners,

—v.—

JANE HODGSON, M.D., *et al.*,

Cross-Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR CROSS-RESPONDENTS

STATEMENT OF THE CASE

Plaintiffs re-affirm the Statement of the Case in B.P. at 2-25.[1]

SUMMARY OF ARGUMENT

It is settled as a matter of law that mandatory parental involvement statutes such as Minn. Stat. § 144.343(2) (hereinafter "subdivision 2") must provide an effective procedure by which mature minors and those minors whose best interests require confidentiality may avoid mandatory parental involvement of any sort. *Bellotti v. Baird*, 443 U.S. 622, 643-44 (1979) (hereinafter *Bellotti II*); *H.L. v. Matheson*, 450 U.S. 398, 420 (1981) (Powell, J., concurring); *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 439-40 (1983). Subdivision 6 of Minnesota's statute recognizes this principle by providing for a judicial bypass alternative. Subdivision 2, however, in effect requires all minors, including emancipated minors, married minors, minors with children, physically abused minors, minors from broken homes, and minors pregnant through incest, to notify both biological parents forty-eight hours prior to any abortion, no matter what the benefit or result may be. Such a statute is not narrowly drawn to protect significant state interests. *H.L. v. Matheson*, 450 U.S. at 413; *Carey v. Population Services International*, 431 U.S. 678, 707-8 (1977) (Powell, J., concurring).

Employing long-settled standards, the trial court made extensive findings regarding both the severe burdens Minn. Stat.

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1 Citations to Petitioners' Brief in No. 1125 are in the form "B.P._____." Citations to Cross-Petitioners' Brief in No. 1309 are in the form "B.C-P._____." As in our brief as Petitioners in No. 1125, citations to the Appendix to the Petition for Certiorari are in the form "_____a," citations to the Joint Appendix are in the form "J.A. _____," and citations to other parts of the record are by Exhibit (P. Ex. _____) or Transcript (Tr.) page. Throughout this brief, Cross-Petitioners are referred to as "defendants," and Cross-Respondents are referred to as "plaintiffs."

144.343(6) (hereinafter "subdivision 6") (two-parent notice with bypass) imposed on minors and single parents, and its utter failure to advance any state purpose other than deterring abortion. 25a, 29a, 41a. Faced with the mandate of subdivision 2, many minors will nevertheless avoid notification at any cost; others will encounter emotional or physical abuse in seeking to avoid teenage motherhood. Even abused and emancipated minors face the Hobson's choice between notifying their parents under the statute and effectively notifying them under the "exceptions" to the requirement. The district court found that forced notice to both parents, even with a bypass option, can constitute an absolute veto over a minor's abortion choice. *A fortiori*, the harsher requirements of subdivision 2 are invalid under any standard as a "kind of government-mandated harm" that violates due process. *Carey*, 431 U.S. at 716 (Stevens, J., concurring).

The "right to know" theory advanced by defendants to justify this statute, a right claimed to be more "fundamental" than the right to privacy, constitutes a new and far-reaching theory as yet unrecognized by this Court. What purports to be a reasonable accommodation of this "right" ignores the prevalence of voluntary parental notice and the selectivity with which Minnesota itself invokes this alleged "right to know." Minors in Minnesota are given specific statutory protection of confidentiality for every other aspect of their pregnancy. Minn. Stat. § 144.343(1). Further, married minors and minors who are parents can consent to all medical care for themselves and their children. Minn. Stat. § 144.342. Only in the case of abortion does Minnesota assert that a constitutionally based "right to know" requires notice to both biological parents. Minn. Stat. § 144.343(1).

Since the burdens of notification to both biological parents without a bypass are so severe, and the trial record proves that no legitimate state interests would be served by such a requirement, subdivision 2 is unconstitutional.

ARGUMENT

I. THE EIGHTH CIRCUIT WAS CORRECT IN HOLDING THAT SUBDIVISION 2 OF THE MINNESOTA CRIMINAL NOTIFICATION STATUTE IS UNCONSTITUTIONAL.

A. Settled Law, Set Forth By This Court And Every Lower Court To Consider The Issue, Requires That Mandatory Parental Notification Laws Provide A Bypass Option.

This Court has firmly established that minors, as well as adults, have a constitutionally protected right to privacy which encompasses the right to terminate pregnancy. *Planned Parenthood of Missouri v. Danforth*, 428 U.S. 52, 72-75 (1976); *Bellotti II*, 443 U.S. 622 (1979). Because this right necessarily involves both autonomy and anonymity in decision-making, *Whalen v. Roe*, 429 U.S. 589, 599-600 (1977), and represents an intensely personal decision, this Court has concluded that it is beyond the power of the state to impose a blanket requirement of third-party participation. *Danforth*, 428 U.S. at 74. Thus, state legislation requiring the involvement of a minor's parents in her abortion choice must not only be narrowly drawn to serve some "significant" state interest, *H.L. v. Matheson*, 450 U.S. 398, 413 (1981); *Carey*, 431 U.S. at 693; *Zbaraz v. Hartigan*, 763 F.2d 1532, 1537 (7th Cir. 1985), *aff'd per curiam by an equally divided court*, 108 S. Ct. 479 (1987), but must also provide a procedure whereby such involvement can be avoided by mature minors and those whose best interests require complete autonomy and anonymity in the decision. *Akron*, 462 U.S. 416, 427 n.10; *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 490-91 (1983) (affirming that requirement of bypass is "not in dispute"); *Bellotti II*, 443 U.S. at 643-44.[2] Particular legislative sensitivity is required, *Bellotti II*, 443 U.S. at 642, in recogni-

2 Any bypass provision, whether administrative or judicial, must, of course, be effective, expeditious and confidential. As plaintiffs have previously argued, subdivision 6 as applied was not effective, either in providing a means for mature or best interest minors to bypass notice, or in advancing state interests. *See generally*, B.P. 13-16, 23-25, 27-38.

tion of the grave consequences of unwanted motherhood for a teenager. *Id.* To date, a majority of this Court has never strayed from this exacting standard of review. *See e.g., Webster v. Reproductive Health Services*, 109 S. Ct. 3040, 3060 (1989) (O'Connor, J., concurring in judgment) (providing the fifth vote to uphold the Missouri statute and declining to re-examine this Court's precedent on grounds that the "requirements [of the law do not] conflict with any of the Court's past decisions concerning state regulation of abortion").

Although defendants agree that parental consent statutes require a judicial bypass, they argue that subdivision 2 survives constitutional scrutiny because it "merely requires that parents be informed," B.C-P. 38,[3] and is therefore distinguishable from the parental consent statutes which this Court has repeatedly held must have a constitutionally adequate bypass procedure. *Akron*, 462 U.S. 416 (1983) (parental consent); *Bellotti II*, 443 U.S. 622 (1979) (parental consent with bypass requiring notification to parents); *Danforth*, 428 U.S. 52 (1976) (parental consent).[4] This argument erroneously construes the prior opinions of this Court and fails to take into account the actual effects of mandatory parental notification on minors.[5]

3 Defendants also argue that notice is less burdensome in fact. This argument is discussed in Point I(B) below.

4 Minnesota's argument that the constitutional standard to be used to evaluate consent requirements differs from that to be used in evaluating notice requirements is inconsistent with defendants' position at trial that the standards are the same. As the district court observed, "[t]he parties agreed in response to a question from the court that the constitutional analysis applicable to notice requirements does not differ from that applicable to consent requirements." 36a. *See also* 81a.

5 Although defendants argue facts about the burden imposed by subdivision 2, the assessment of burdens was treated as a question of law at the trial level. 37a-38a. In Point I(B), *infra*, plaintiffs demonstrate that the burdens imposed by forced notice to both biological parents are effectively the same or greater than the burdens of most consent statutes. Nevertheless, if this Court finds that the difference between notice and consent is of constitutional significance, we argue that the case should be remanded to the district court for specific factual findings regarding the burdens of notification without bypass. *See* n.21, *infra*.

This Court has never considered any abstract distinction between notice and consent to be constitutionally significant. For example, in *Bellotti II*, Justice Powell, writing for the plurality, stated:

> We conclude, therefore, that under state regulation such as that undertaken by Massachusetts, every minor must have the opportunity—if she so desires—to go directly to a court without first *consulting or notifying* her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental *consultation or consent*.

443 U.S. at 647 (emphasis added).[6] This holding was reaffirmed by a majority of this Court in *Akron*, noting that an Ohio statute:

> makes no provision for a mature or emancipated minor completely to avoid hostile parental involvement by demonstrating to the satisfaction of the court that she is capable of exercising her constitutional right to choose an abortion. On the contrary, the statute requires that the minor's parents be notified once a petition has been filed, . . . a requirement that in the case of a mature minor seeking an abortion would be unconstitutional.

462 U.S. at 441 n.31 (citations omitted); *id.* at 427 n.10 (coining the term "parental involvement" to describe notice and consent requirements alike). Further, lower courts, including the district

6 The plurality opinion in *Bellotti II* represented the views of Chief Justice Burger and Justices Stewart, Powell and Rehnquist. Justices Stevens, Brennan, Marshall and Blackmun joined in an opinion which found the parental consent statute in that case unconstitutional because, "In every instance, the minor's decision to secure an abortion is subject to an absolute third-party veto," whether by a parent or a court. *Id.* at 654 (footnote omitted).

court and court of appeals below,[7] have consistently held that a bypass procedure is required whenever notification is required.[8]

7 The district court entered a restraining order enjoining subdivision 2 of Minn. Stat. § 144.343 on July 31, 1981, J.A. 1-2, one day before it was to have gone into effect. The subdivision was preliminarily enjoined on March 22, 1982, J.A. 6. The injunction was made permanent on November 6, 1986, 27a-38a, affirmed by a panel of the Eighth Circuit on August 27, 1987, 58a-62a, and by the Eighth Circuit *en banc* on August 8, 1988. 80a-81a. At each stage, subdivision 2 was held unconstitutional as a matter of settled law. *See* 37a-38a; 81a.

8 *See Indiana Planned Parenthood Affiliates Ass'n v. Pearson*, 716 F.2d 1127 (7th Cir. 1983); *Planned Parenthood Ass'n of Atlanta v. Harris*, 691 F. Supp. 1419 (N.D. Ga. 1988); *Zbaraz v. Hartigan*, 584 F. Supp. 1452 (N.D. Ill. 1984), *vacated in part and remanded*, 763 F.2d 1532 (7th Cir. 1985), *aff'd by an equally divided Court*, 108 S. Ct. 479 (1987) (per curiam); *Glick v. McKay*, 616 F. Supp. 322 (D. Nev. 1985); *Akron Center for Reproductive Health v. Rosen*, 633 F. Supp. 1123 (N.D. Ohio 1986), *aff'd sub nom. Akron Center for Reproductive Health v. Slaby*, 854 F.2d 852 (6th Cir. 1988), *prob. juris. noted sub nom. Ohio v. Akron Center for Reproductive Health*, 109 S. Ct. 3239 (1989); *Orr v. Knowles*, No. CV81-0-301 (D. Neb. Sept. 16, 1983). *See also Women's Community Health Center v. Cohen*, 477 F. Supp. 542, 547 (D. Me. 1977) (pre-*Akron* decision that notification laws must have a bypass); Op. Att'y Gen. No. 85-035 (Md. Dec. 31, 1985); Op. Att'y Gen. No. 84-239 (Tenn. August 7, 1984).

The Seventh Circuit's discussion of this point in *Pearson* is particularly helpful:

> In requiring that states provide bypass procedures in connection with both consent and notification statutes, the Court has made no suggestion that procedures insufficient for consent statutes would be sufficient for notification statutes. Rather than differentiating between consent and notification statutes, the Court in *City of Akron* stated that it is "parental involvement" that an emancipated or mature minor must have an opportunity to avoid. The apparent reason for the similar treatment of notification and consent requirements is that, as a practical matter, a notification requirement will have the same deterrent effect on a minor seeking an abortion as a consent statute has.
>
> . . . .
>
> Because parental involvement brought about by either consent or notification statutes may result in similar efforts by parents to block the abortion, we will apply the Supreme Court's analysis with respect to consent bypass procedures in our consideration of the

This Court's rejection of gossamer distinctions between "consent" and "notice" constitutes recognition that parental authority which can be used to benefit teenagers may also be used to obstruct their exercise of constitutional rights, simply by virtue of the economic, emotional and other coercive powers most parents inherently have over their children. As this Court noted in *Bellotti II*:

> [M]any parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct . . . an abortion . . . .

443 U.S. at 647. *See also H.L. v. Matheson*, 450 U.S. 398, 420 & n.9 (1981) (Powell, J., concurring); *id.* at 428 n.3 (Marshall, J., dissenting); opinion of Eighth Circuit *en banc* at 81a. *Cf. Planned Parenthood of Rhode Island v. Bd. of Medical Review*, 598 F. Supp. 625, 635 (D.R.I. 1984) ("spousal notification requirement . . . opens the door to total frustration of a woman's personal and unilateral decision to have an abortion" because husbands "will exert physical or emotional pressure to coerce their wives to forego the abortion entirely").[9] The trial record in this case bears witness to these facts. *See* discussion Point I(B), *infra*.

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constitutional sufficiency of Indiana's notification bypass procedures.

716 F.2d at 1132 (citations omitted).

9 The Seventh Circuit has characterized the effects of parental notification as follows:

> Unemancipated minors are fundamentally different from adults because they are financially dependent upon their parents and have numerous legal incapacities. In addition, parents have considerable leeway to impose punishment upon their children for disobedience. Because of this, minors often have no choice but to comply with parental directives.
>
> Although notification requirements do not give parents the legal power to veto their daughter's abortion decision, as a practical matter they may . . . . It was a recognition of this vulnerability that led the plurality in *Bellotti II* to state that confidentiality was necessary in a waiver-of-consent proceeding.

Pearson, 716 F.2d at 1132 (citations omitted).

B. Minnesota's Two-Parent Notification Statute Is So Burdensome As To Be Unconstitutional Under Any Standard.

Employing a standard never before adopted in a privacy case, defendants contend that Minnesota's statute passes constitutional muster under a new form of rational basis test.[10] In so arguing, defendants rely on post-trial assertions and fail to cite any evidence to support their argument that Minn. Stat. § 144.343(2) would in fact result in increased notice, benefit minors or families, or actually impose "markedly less[ ]" of a burden[11] on minors than some hypothetical consent statute. Defendants' assertions cannot sustain the statute, however, because the overwhelming evidence in the record establishes that precisely the opposite is true.[12] As outlined below, the rec-

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10 Defendants contend that following this Court's decision in *Webster*, 109 S. Ct. 3040 (1989), "a state regulation pertinent [to the constitutional right to choose abortion] may survive constitutional challenge if it is reasonably designed to further a 'legitimate' state interest and does not unduly burden the abortion process." B.C-P. 23. But as Justice Blackmun stated, this Court in *Webster* made not "a single, even incremental, change in the law of abortion." *Webster*, 109 S. Ct. at 3067 (Blackmun, J., concurring in part and dissenting in part); *id.* at 3064 (Scalia, J., concurring in judgment) (Court "avoid[ed] almost any decision of national import"). *See also* Chief Justice Rehnquist speaking for the plurality in *Webster*, explicitly declining to "revisit" this Court's holding in *Roe v. Wade*, 410 U.S. 113 (1973), stating instead that "we leave it undisturbed." *Webster* at 3058; *id.* at 3060 (O'Connor, J., concurring in judgment) ("there is no necessity to accept the state's invitation to re-examine the constitutional validity of *Roe v. Wade*"). Since *Webster*, courts and Attorneys General have read the case as providing no majority of this Court for a change in *Roe* or its standard of review. *E.g.*, *In re T.W.*, No. 74,143, slip op. at 6 (Fla. Oct. 5, 1989) (per curiam); 1989 Op. Att'y Gen. No 16 (Wash. Aug. 25, 1989); 74 Op. Att'y Gen. No. 89-023 (Md. July 20, 1989).

11 The "balancing" approach to constitutional analysis which defendants hereby advance has been consistently rejected by members of this Court. *See Webster*, 109 S. Ct. at 3066, n.* (Scalia J., concurring in judgment); *Akron*, 462 U.S. 416, 420 n.1 (1983).

12 Even in their post-trial Proposed Findings of Fact, defendants failed to cite a single piece of evidence in support of their proposed finding

ord shows that minors will be driven to dangerous alternatives in seeking to avoid involving parents and that, if notice were successfully compelled, their lives, and those of their single parents, would be imperiled. Without a judicial or other bypass mechanism, many mature and best interest minors, including emancipated minors and victims of abuse, will thus have their privacy rights violated.

1. Some Minors Will Go To Any Length To Avoid Involving One Or Both Parents In Their Abortion Choice, Whether In The Context Of A Notice Or Consent Statute.

Most minors notify at least one parent about their pregnancy.[13] 31a; 41a. Many others discuss their pregnancy with another adult.[14] J.A. 380-81. Kathy M. Tr. 1234, P. Ex. 96 at 7. Martin Tr. 412. Those members of plaintiff class who cannot involve one or both biological parents, however, have compelling reasons. *See* B.P. 16-23. These reasons include: fear of

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that notice is less burdensome than consent. *See* Defendants' Proposed Findings Of Fact And Conclusions Of Law, p.36 No. 13. Defendants get around the record in this case by simply disagreeing with, or ignoring, the trial court's extensive findings. Unless defendants prove clear error by the district court, they are foreclosed from writing their own, alternative assessment of the factual record. *See Anderson v. Bessemer City*, 470 U.S. 564, 573-74 (1985); *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 857-58 (1982); *United States v. Nat'l Ass'n of Real Estate Bds.*, 339 U.S. 485, 494-95 (1949).

13 Younger minors are more likely then older ones to notify their parents. 1 *Risking the Future: Adolescent Sexuality, Pregnancy and Child-Bearing* 192 (C. Hayes ed. 1987).

14 Out of the 258 minors involved in the court bypass hearings at which Minnesota State Court Judge Petersen had presided, 35 had discussed their abortion with one parent, 48 had discussed it with an adult relative, and "[i]n many of the remaining cases, the girl had sought out the advice and counsel of other adults before going to professional counselors. Those adults include teachers, employers, parents of friends, parents of the potential father, ministers, priests and neighbors." J.A. 380-81.

recurring abuse;[15] fear that one or both parents would obstruct the abortion;[16] serious illness or disability in the family;[17] fear of notifying an estranged parent with whom the minor has no emotional relationship or trust;[18] fear that notice would evoke

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15 Judge Gerald Martin testified that one minor who appeared before him was "frequently abused" by her father, and that her father had broken her mother's wrist a week or two before the hearing. J.A. 204. *See also* § B(2), *infra*.

16 In his order finding C.U. to be mature and capable of giving informed consent, Judge Martin wrote, "[p]etitioner stated that her father is dramatically opposed to abortion and she is concerned that he would force her to leave home if he knew of her condition." P. Ex. 55L. *See also* § B(2), *infra*.

17 Plaintiff Rose C., who told her mother, stated that her family doctor advised her not to tell her father about the pregnancy because he was recovering from a massive stroke and the stress would be harmful to him. P. Ex. 98 at 12-13. Mary J., whose mother was a recovering alcoholic, testified that she was afraid, based on her knowledge of her mother's addictive behavior, that notification of her pregnancy would cause her mother to resume drinking. Mary J. Tr. 634-35. Amy W. testified that her mother had suffered a nervous breakdown the previous winter and that she was afraid that notice of her pregnancy would have deleterious effects on her mother's health. P. Ex. 111 at 6-7. Susan B., 17 years old, testified she did not wish to notify her parents because there had recently been illnesses and deaths in her immediate family. P. Ex. 99 at 4-5. Judge Peter Hemstad found that W.C., who was one month short of 18, should be allowed to obtain her abortion without notifying her parents because, in part, her parents were divorcing and her father was paraplegic. P. Ex. 55S.

18 Emma G., who had discussed her pregnancy with her father, testified that her parents had divorced when she was one year old, and that her mother lived in Maryland. She also testified that she first met her mother when she was 14 years old. P. Ex. 104 at 10-11. Harriet T. testified that her parents had divorced when she was five years old and that her father lived in the East. P. Ex. at 8. She also testified that she had only seen her father twice in the previous four or five years. *Id.* at 10. Sally H. testified that her parents had been divorced for seven years and that her father lived in Colorado. She also stated, "I don't—I see him, but not enough for him to have anything to do with what I have to do with my future . . . . " P. Ex. 96 at 9. In his order declaring B.L. a mature minor, Judge Martin stated, "Petitioner related to the Court that her mother and father separated when she was about [10]

violence towards one parent by the other;[19] or fears based on the fact that the pregnancy was the result of incest.[20]

Although defendants assume that a blanket notice requirement without a bypass option would operate to force notice to both biological parents without cost to the minor, this assumption must fail in light of the trial record.[21] Social workers, clinic personnel, experts, all made clear that many minors would forego critical medical care, rather than involving their parents, if there were no bypass option. Ring Tr. 1661, Melton Tr. 1154, Welsh Tr. 122-23. This is because teenagers are so concerned with confidentiality, Melton Tr. 1147-48, David Tr. 2544-45, Peterson Tr. 1289, that the decisive factor in whether to seek

years old and that since that time she sees her father possibly once a year." P. Ex. 55F. In another court proceeding, Judge Martin found L.Q. mature and stated that "her father is currently a fugitive from the law and his whereabouts are unknown." P. Ex. 55I.

19 In his order declaring C.U. to be mature, Judge Martin stated, "Petitioner informed the Court that her father is a practicing alcoholic and has been very abusive towards her and her mother in the past . . . . She is concerned that if her father knew he would be physically abusive towards her and perhaps her mother." P. Ex. 55K. Judge Oleisky testified, "[W]e have heard . . . where the parent will say I am afraid of assault from my husband or if he were to know about this." J.A. 166.

20 P.C., a member of plaintiff class, was living with her father and stepmother when she was reportedly impregnated by her stepbrother. Welsh Tr. 230-31. It would not have been reasonable to expect P.C. to notify her natural mother, who lived away from her and had abused P.C. in the past. Welsh Tr. 231.

21 The district court made no specific findings on the effect of mandatory notice without a bypass option; because it, like the court of appeals, held that the unconstitutionality of subdivision 2 was settled as a question of law. 38a; 81a. However, many of the court's findings concerning subdivision 6 apply with even greater force to a system that eliminates a bypass. Should this Court find that the necessity of a bypass procedure for this notification statute rests on a factual evaluation of either the degree of burden or the statute's effectiveness, not already satisfied by the present record or trial court findings, this Court should remand to the district court for further findings of fact.

health care in connection with a pregnancy is often whether they will be assured privacy. Melton Tr. 1154.[22] Minors' desperation for privacy is illustrated as well by the fact that nearly one-half of all minors receiving abortions went through the arduous and traumatic bypass procedure, often accompanied by their mothers, in order to avoid notice to one or both parents. J.A. 123. *See generally* B.P. at 9 n.16, 23-24.

Some minors, who choose to neither notify nor carry to term, will run away,[23] commit suicide,[24] obtain illegal or self-induced

22 Torres, Forrest & Eisman, *Telling Parents: Clinic Policies and Adolescents' Use of Family Planning and Abortion Services*, 12 Fam. Plan. Persp. 284, 288 (1980) (twenty-three percent of teenagers would not seek an abortion at a clinic which required parental notification); Cartoof & Klerman, *Parental Consent for Abortion: Impact of the Massachusetts Law*, 76 Amer. J. Pub. Health 397, 399 (1986) (one in three minor abortion patients living in Massachusetts had abortions in states that did not require parental consent); Chamie, Eisman, Forrest, Orr & Torres, *Factors Affecting Adolescents' Use of Family Planning Clinics*, 14 Fam. Plan. Persp. 126, 133 (1982) (twenty-six percent of adolescents prefer clinics to doctors because they fear doctors will notify parents). Torres, *Does Your Mother Know...?*, 10 Fam. Plan. Persp. 280, 281 (1978) (thirty-six percent of teenagers would not attend family planning clinic if parents were notified); Zabin & Clark, *Why They Delay: A Study of Teenage Family Planning Clinic Patients*, 13 Fam. Plan. Persp. 205, 213 (1981) (three out of ten adolescents state that they delay attending family planning clinics because they are afraid their parents will be notified).

23 Elizabeth S., a member of the plaintiff class, testified that she would have left home rather than tell her parents of her pregnancy. When asked why she opposed telling her parents, she stated, "[My father] totally disagrees with abortion . . . . He thinks that if a person is old enough to have sex he is old enough. [sic] If she gets pregnant they're old enough to take care of the baby." P. Ex. 105 at 5.

24 One minor plaintiff testified that she considered committing suicide or running away rather than notifying her father, a prominent anti-abortion politician. She was convinced by clinic counselors to consider options other than suicide, and she chose to appear before a judge instead. J.A. 65.

abortions,[25] or travel long distances out of state[26] rather than inform their parents of their pregnancy. Thomas Webber, the executive director of Planned Parenthood of Minnesota, testified that one quarter of the minors who came to Planned Parenthood clinics stated that they could not notify their parents of the abortion. When asked how minors would cope with a notice requirement, he stated:

> Some [minors] said they would seek illegal abortion care, some said they would lie about their age, some said that they would leave home, some said I don't know what I would do but I can't talk to my parents . . . .

Webber Tr. 611.[27]

Required notification without a bypass option would, at a minimum, lead minors to delay obtaining critical care, subjecting them to the increased risks of childbirth and all the attend-

25 Dr. Hodgson testified that one of her 14-year-old patients had attempted to self-abort and had severely damaged her cervix in the attempt. J.A. 462. *See* Binkin, Gold & Cates, *Illegal Abortion Deaths in the United States: Why Are They Still Occurring?*, 14 Fam. Plan. Persp. 163, 165 (1982) (desire for secrecy was primary reason why teen self-aborted and consequently died).

26 Legal abortion in another state with no restrictive laws is an option available only to those few minors who have both the necessary economic resources and the geographic proximity to an out of state provider. Plaintiff Kathy M. was taken to Iowa for an abortion by her mother when their local judge, who was religiously opposed to abortion, denied their bypass petition. Kathy M. Tr. 1239-41. It is unclear whether she could have done this without her mother's help.

27 This trial testimony is substantiated by such studies as one which found that forced parental notification would cause nine percent of pregnant minors to self-abort or seek an illegal abortion. Torres, Forrest & Eisman, 12 Fam. Plan. Persp. at 288. This testimony is further substantiated by the history of young women's actions before they could obtain legal abortions. *See* J.A. 457 (a number of attempted suicide patients seen in a psychiatric ward were, or feared they were, pregnant); B.P. 11 n.21 (before abortions were legal and accessible to minors under conditions of confidentiality, a large proportion of teenage girls who attempted or succeeded in suicide thought they were, or actually were, pregnant).

ant problems of teenage motherhood. B.P. 11-13.[28] Delay results from denial, from minors' hopes of avoiding notification of their parents, or from the time required to contemplate their limited options for obtaining an abortion in confidence, such as traveling out of state. Even minors with serious health problems which necessitate an immediate abortion, but which are less than imminently life-threatening, would be compelled to delay or forego medical treatment when notification of both parents is not in the minor's best interests.[29]

28 Evidence offered at trial demonstrates that the percentage of minors getting second trimester abortions in Minnesota increased 26.6% (from 18.4% to 23.3% from 1978 to 1983. In contrast, these percentages increased only 12.2% for 18 to 19 year olds and only 14% for 20 to 24 year olds. 135a. Defendants erroneously claim that subdivision 6 caused no increase in the average gestational age of Minnesota minors seeking abortions, B.C-P. 19, but their argument proves nothing. Dr. Paul Gunderson, Director of the Minnesota Center for Health Statistics, testified that the "average" gestational age noted in defendants' Exhibit 35 is the "mean" gestational age, calculated by adding the gestational age for each minor who obtained an abortion and dividing it by the number of abortions. Exhibit A, *infra* at A-1. If, therefore, a number of minors obtained early abortions, they would mask the trend toward later abortions in other minors. Thus, in response to a hypothetical question, Dr. Gunderson conceded that, if Minnesota minors were otherwise generally participating in the national trend towards earlier abortions, an unchanged mean gestational age could be explained by the presence of minors who delayed their abortions until a later stage in their pregnancy. Exhibit A, *infra* at A-1-3.

29 Subdivision 4(e) of the statute provides an exception for minors whose health is so endangered that her doctor can certify she will die within three days. Specifically, subdivision 4(a) states that no notice is required if the attending physician certifies the abortion is necessary to prevent the minor's death and there is insufficient time to provide the required notice. By the terms of the statute, the procedure may be performed 72 hours after notice is mailed. But, unless the doctor can state the minor will die within those three days, it is presumed that there is sufficient time to notify the parents. This exception does not help minors whose health problems warrant immediate abortions but whose lives cannot be certified to be so imminently endangered.

For example, when plaintiff H.L. began to abort spontaneously at the Women's Health Center of Duluth she could not be treated by an abortion procedure without notice to both her parents, because spontaneous abortions are usually not life-endangering. She was therefore

Despite the lengths to which minors will go to avoid notice, defendants contend that Minnesota's law falls short of an absolute veto, and somehow reasonably accommodates the interests and rights of minors. B.C-P. 37-38. But the illusory distinction they draw between statutes requiring notice, as in Minnesota, and those requiring consent is of little consequence to minors.[30] It is parental involvement which minors in Minnesota sought to avoid at all cost, and the record makes clear that notice alone, without a bypass, would deprive minors of critical choices and drive them to acts of desperation. The simple fact is that privacy, violated as much by "notice" as by "consent," is what they seek.

2. Forced Notice Puts Some Minors And Parents At Risk Of Harm And Creates An Opportunity To Obstruct Access to Abortion.

No one disagrees that the ideal situation for a pregnant minor is one in which both her parents, living together and with her, discuss the situation with the minor, offer advice, and support the decisions which need to be made about the pregnancy. However, this ideal is unattainable and unavailable to many teenagers. In fact, only fifty percent of the members of plaintiff class of minors live with both biological parents. 29a. Moreover, blanket requirement of notice for *all* minors would present significant numbers of them with a choice between unwanted motherhood and physical or psychological abuse. Requiring two-parent notice will subject many parents to these evils as well.

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taken to the court, accompanied by her mother and a nurse, in order to obtain a court order. Welsh Tr. 165-66. If no bypass had been in place, she would have had to wait for treatment until both parents were located or until 72 hours had elapsed from the time notice was mailed. This assumes she and her mother would have agreed to notify the father.

30 For example, Massachusetts state court judge Paul Garrity testified that he had adjudicated over 200 bypass cases under the Massachusetts parental consent statute. Not one of these minors had initially told her parents and then been refused consent. J.A. 290-93.

The district court found and defendants do not dispute that intrafamilial violence is a widespread phenomenon in Minnesota and in the nation as a whole. 30a. Violence and the threat of violence are too frequently a part of the lives of many of the plaintiff class.[31] Some minors had experience with violence inflicted on older sisters who had become pregnant.[32] These minors are only too aware that parental knowledge of their pregnancy could precipitate further abuse.[33] J.A. 204; J.A. 226;

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31 Natalie C., a plaintiff minor, testified, "my step-dad, he's got a bad temper and I'm scared of him and I was just afraid he'd knock me around." J.A. 66. Sarah L., a minor's mother, testified that her ex-husband had held one of their daughters locked up in her bedroom during a visit and that she had to send money to her daughter's friend so that the friend could help her daughter escape. J.A. 276-77. *See also* B.P. 16-19.

32 Ida B., an older sister of a plaintiff minor, testified that she had become pregnant when she was a teenager. She testified that when her father learned of her pregnancy "he was outraged, he was physically violent . . . [t]o me and my mother . . . [t]o the point of being slapped and kicked [sic] and abusive to my mother in the same way." Ida B. Tr. 1440-41. Paula Wendt testified:

> [O]ne [minor] chose to tell neither parent and she said that three years ago her father found her older sister in a somewhat compromising situation with her boyfriend. She said her father became so enraged over this he took her sister to a bar on Hennepin Avenue in downtown Minneapolis and forced her to sit and watch the prostitutes the way they were picked up by men. She said that he told her sister that if she were going to act like a whore she should see the way they live.

J.A. 116. This minor was adamant in refusing to notify her parents. *Id.*

33 Indeed, defendants' own proffered "expert," Dr. Rue, testified that, in some cases, forced notification could "exacerbate the problem." Exhibit E, *infra* at A-25. When asked how this could happen, he stated:

> In cases where there is very severe dysfunctional communication, threats of violence, very poor family life, it is possible that notification could be harmful to both the adolescent—well, primarily to the adolescent.

Id. He also admitted under cross-examination that mandatory notice could conceivably result in a parental reaction ending up in the death of the minor. J.A. 367. Recently, an Idaho father was indicted for the

J.A. 269-70; *see also* J.A. 193-94; J.A. 161; J.A. 245; J.A. 324; J.A. 464. It is not surprising, therefore, that many of the minors who used the bypass procedure stated that they did so because they feared parental abuse. J.A. 161; J.A. 203-204; J.A. 226; J.A. 237; J.A. 245; J.A. 269-270; J.A. 460.[34]

The two-parent notice requirement will also jeopardize the physical safety of some parents and will interfere with the integrity of those families who choose not to include both biological parents in the minor's abortion choice. For example, mothers of minors testified they will be abused if their estranged husbands learn of their daughters' pregnancies. D.P., a minor's mother, testified that during their marriage, her ex-husband "would just hit [her] all over and throw [her] down or [do] the same thing to the children." J.A. 180. When asked what she feared if she were forced to notify her ex-husband, she replied, "His violence. His last marriage ended where she ended up in the hospital a couple of time and he also did physically abuse

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first degree murder of his 13-year-old daughter. The young woman, who had allegedly been impregnated by her father, was to have obtained an abortion the following morning. Ensunsa, *Adams charged with murder*, The Idaho Statesman, August 23, 1989, at 1C, col. 3. *See* Exhibit G, *infra* at A-33-34. Dr. Rue endorsed notification to rapists and incestuous abusers. J.A. 366.

34 Defendants attempt to minimize the number of minors who fear parental retaliation by mischaracterizing the statistics compiled by state court Judge Petersen, B.C-P. 9-10. First, they state that only four percent of minors who went to court fear physical abuse. B.C-P. 10 n.5. This number refers, however, to those minors who are categorized as fearing *recurring* abuse. A closer look at Judge Petersen's tables reveals that several of his categories fall under any definition of abuse. For example, at least twice that number state explicitly that they fear physical abuse, whether recurring or initial (i.e., 11 stated that they feared a reoccurrence of prior abuse and 10 stated they were fearful based on prior expressed threats). J.A. 382. Others discussed family problems that are often associated with incidents of abuse (i.e., alcoholism, marital problems, etc.). *Id.* Second, and perhaps more importantly, defendants do not take into account the extensive evidence demonstrating that abused minors frequently do not reveal abuse. Those who reveal this family secret are but the tip of the iceberg. *See* § B(3) *infra*; 30a (abuse underreported).

their three children and that just—it just frightens me." J.A. 181.[35]

Physical abuse is not the only consequence minors fear. Trial testimony demonstrated that some parents attempt to obstruct their daughters' access to abortion services,[36] or make an abortion as difficult to obtain as they possibly can.[37] Based on their knowledge of their parents, some minors used the judicial bypass because they feared that similar tactics could be used against them.[38] J.A. 64, 114-115, 232, 460; *see also* J.A. 280,

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35 Another plaintiff, Sarah L., the mother of a pregnant teenager, Kathy M., testified that her ex-husband had repeatedly subjected her to emotional abuse during their marriage. J.A. 277. She also stated, "[t]wice during the last six years of our marriage when he was in a drunken stupor he put a .45 Magnum [sic] to my head and was going to blow my head off." J.A. 279. When asked why she had not even considered notifying her ex-husband, she said, "[h]e would go totally insane . . . Kathy was terrified of him, horribly terrified of him." Sarah L. Tr. 1261-62. "We would not have notified him. She would have had the child. We would not have notified him, there would have been no way, no way." J.A. 280.

36 For example, Dr. Hodgson testified concerning an incident in which a mother removed her 15-year-old daughter from school and kept her locked in the house to prevent her from obtaining an abortion. J.A. 462.

37 The administrative assistant in the Guardian Ad Litem Office of Hennepin County testified that some parents refused to sign the acknowledgement of notice in order to make the procedure as difficult as possible for their daughters. J.A. 332. *See also* J.A. 64; J.A. 114-15; J.A. 161; B.P. 42 n.80.

38 Agnes I. testified that her mother, who was politically active in the anti-abortion movement, had told her that, if she ever became pregnant, she would either have to carry to term and put the child up for adoption or lose her parents' support. P. Ex. 112 at 9-10. Sally H. testified that her mother had told her she would be forced to leave home if she ever became pregnant. P. Ex. 96 at 9-10. Natalie C. testified, "my mom once said I would be kicked out if I got pregnant[,] if she ever found out I'd be kicked out." J.A. 66-67. Rose E. testified that she and her mother traveled to Duluth rather than notify her father. When asked why she did not tell her father about her pregnancy, she stated:

(*Footnote continued*)

318. Further, although parental obstruction may be most successful with younger minors, *see* B.P. 42 n.80, many older minors will be unable to withstand parental efforts at obstruction and will be forced into childbirth against their will.[39] Contrary to Justice Stevens' assumption, not all mature minors can simply ignore any parental disapproval by virtue of their intellectual and emotional capability to make important decisions. *See Matheson*, 450 U.S. at 425 n.2 (Stevens, J., concurring).[40]

> I was—would be intimidated by his reaction. I know that he's conservative and I know his views on issues like abortion. I think it would really disrupt the family unit, ourselves, and it probably would be carried to extremes. I might have even had to leave home.

P. Ex. 97 at 5. Beth F. testified that, although she discussed her pregnancy with her boyfriend's mother, she would not talk to her own mother because she was afraid of being forced to leave home. P. Ex. 108 at 9-10. Her mother had once locked her out of her home when she saw Beth kissing her boyfriend. *Id.* at 11. In his order declaring B.L. a mature minor, Judge Martin stated, "[p]etitioner informed the Court that her mother has forced her to leave the home in the past and feels that this may happen again if she is told." P. Ex. 55F.

39 In downplaying this type of testimony, defendants miscount the number of minors who told Judge Petersen that they feared obstruction by their parents. B.C-P. 10 n.7. While five percent explicitly stated that their parents would force them to keep the child, 21% stated that their parents would force them to leave home. J.A. 381. Such a threat would obviously have a chilling effect on a minor's exercise of her privacy rights.

40 Similarly, a district court in Rhode Island, in striking down a spousal notification requirement, observed:

> [W]hen a woman has chosen not to communicate with her husband concerning her abortion decision, it is often due to the fragile or strained nature of the marital relationship. The wife in such a marriage may fear or avoid consultation with her husband for a number of reasons including an imbalance of decision-making power within the marital relationship; fear of physical abuse; extreme dissention regarding religious or moral values; and a variety of other communication barriers. In this type of dysfunctional marriage, the parties agree that forced notification may result in the husband physically abusing his wife, or exerting psychological or economic coercion to prevent the abortion altogether.

Planned Parenthood of Rhode Island v. Bd. of Medical Review, 598 F. Supp. 625, 635-36 (D.R.I. 1984) (citations omitted). *See also Scheinberg v. Smith*, 482 F. Supp. 529, 537-38 (S.D. Fla. 1979), *rev'd on other grounds*, 659 F.2d 476 (5th Cir. 1981).

Maturity is, unfortunately, no shield against a clenched fist or a closed door.

Defendants seek to sidestep the weight of this evidence by arguing that some minors, on occasion, overestimate the severity of parental reaction to their pregnancies. B.C-P. 11.[41] Defendants ignore the fact that single parents and others often corroborated minors' testimony about family violence. *See* n.44. State court judges, court-appointed guardians, social workers,[42] doctors, and other medical and court personnel uniformly testified that they believed the minors and single parents with whom they had contact had accurately described their family situations.[43]

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41 Even if it were true that a small number of minors misapprehend the degree of violence they would face, fear itself is enough to convince these minors to go through the bypass procedure. If an effective bypass were not available, that same fear would cause them to take more drastic steps. *See* § B(1) *supra*.

42 Defendants' own witness, Mary Ring, was an Olmstead County social worker who worked in the child protection division and had done pregnancy counseling for 12 years. She testified, regarding her counseling of pregnant teenagers, it would "be a violation of [my] professional ethics to advise her parents." Ring Tr. 1661. She also testified that if teenagers even thought she would tell, it would be a "great barrier" preventing many minors from seeking her help. *Id.* She believed, based on her experience and knowledge of the families involved, that threats of violence are real. Ring Tr. 1663.

43 Judge Neil Riley testified, "Quite universally the [reason why mothers accompanied their daughters to court] was that the father would beat up the child and raise unshirted hell if he were to know about [the pregnancy]." Riley Tr. 2009. He also testified that he believed these mothers because "[they were] in the best position to know." *Id.* Judge Gerald Martin was asked whether he too believed petitioners who stated that they were afraid of abuse from their parents. He replied, "Oh, yes. For sixteen years I have seen a great deal of that and there is no reason for me not to believe that." J.A. 204. Two other state court judges testified that, based on their years of experience on the bench, they believed the minors and parents who told them of intrafamilial abuse. J.A. 161-62; J.A. 166; J.A. 292. When Dr. Lenore Walker was asked whether a minor's judgment that she cannot notify one or both parents was correct, she answered:

(*Footnote continued*)

Defendants argue, without having offered proof at trial, that if and when parents are ultimately notified pursuant to subdivision 2, parents will provide emotional support, provide medical information to the physician, and assist them in obtaining proper post-abortion care. B.C-P. 34-35. But the trial record belies these assumptions as well. The evidence demonstrates that parental knowledge does not always benefit minors.[44] Many parents are abusive or otherwise unsupportive, while others inhibit minors from providing accurate medical

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> In my professional opinion, yes, it is likely to be an accurate perception. In abusive, dysfunctional families particularly a hyper-reluctance to discuss any potential violence develop and that sensitivity is a very accurate and real sensitivity and I think her judgement, a minor child's judgment that this might—telling her parents might create a dangerous situation is very accurate.

J.A. 197. Dr. Walker also testified that the perception of potential violence made by a mother in a dysfunctional family is also accurate. J.A. 198. Susanne Smith, the supervisor of the guardian ad litem program in Hennepin County, testified that based on her 10 years of experience in juvenile court, she believed the minors who described physical abuse and parental opposition to abortion. J.A. 232. Heather Sweetland, assistant public defender in St. Louis County, was asked whether she believed minors who told her of physical abuse in the home. She replied:

> Yes, I do, in part because they are so reticent about telling me; they are embarrassed to tell me, but they feel they need to tell me so that they can get the judicial bypass or the order allowing them to have the procedure.
>
> The other reason I believe them is that I handle kids, you know, minors every day of the week in juvenile delinquency court and I like to think I can tell the difference between someone who is lying through their teeth and someone who is not . . . . I think these women are telling me the truth.

J.A. 245-46.

44 Some parents, upon notification, will actually harm them instead. *See* n.33, *supra*. Defendants attempt to refute this evidence by arguing that not all parents are abusive. Plaintiffs do not dispute that fact; plaintiffs argue, however, that the state should allow some minors and their single parents the opportunity to decide what is in their own individual best interests.

histories,[45] or fail to promote greater post-abortion care.[46] These facts depict an unfortunate tragedy of dysfunctional family life. Minnesota's statute fails to address this tragedy and undermines the state's asserted interest in protecting minors who are already victims.

3. The Statutory Attempt To Exempt Abused Minors From The Mandatory Notice Requirement Does Not Render It Constitutional.

Defendants argue that subdivision 2 is narrowly tailored to accommodate the rights of minors because subdivision 4(c) contains an exception for minors who are reported victims of abuse or neglect. B.C-P. at 33. The record makes clear that Minnesota's effort to exempt such minors from its statutory mandate has been wholly unsuccessful.

As the district court found, "members of dysfunctional families are characteristically secretive about such matters and

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45 Paula Wendt, the co-administrator of Meadowbrook Women's Clinic, testified that clinic staff members take medical histories from minors outside the presence of their parents because "[w]e feel we get more accurate medical history if there is nobody else there, particularly with minors because they will have some aspects of their medical history that their parents do not know about . . . ." J.A. 129. Dr. Jane Hodgson also testified to this effect, stating that she always insisted on seeing the minors alone "because [she] found that the histories were much more accurate, particularly in regards to confidential matters." J.A. 439.

46 Defendants' reliance on the fact that many minors do not return to the clinics for a post-procedure check-up ignores evidence that puts this fact into context. For instance, it is undisputed that many minors must travel long distances to reach a clinic. 15a. It is therefore very likely that they decided to obtain post-procedure care closer to home. Furthermore, many of these minors presumably notified their parents, since more than half of all minors do so. It is therefore logical to presume that at least some parents agreed not to have their daughters return to the clinic in which they obtained abortions. Finally, the same percentage of adults as minors do not return for post-abortion check ups. Wendt Tr. 175. No one, however, suggests that these adult women be forced to notify their husbands, or parents, to ensure that they return to a clinic for a check-up.

minors are particularly reluctant to reveal violence or abuse in their families." 30a. Dr. Lenore Walker, a renowned expert in the field of family violence, testified:

> [I]t is very rare for children who are either physically or sexually abused to tell anybody about the abuse in any event. With the addition of pregnancy it would make it even less likely; there may be some who would, but it would be a very small percentage who would tell . . . . I think it would be almost impossible for most of them to take advantage of [the exception] psychologically.

J.A. 196. Because it is so difficult for an abused minor to break this code of silence and because her circumstances often preclude notice to both parents, elimination of the bypass will obviate her abortion option altogether.

Even if a minor is emotionally able to report the abuse, reporting itself, under Minnesota law, initiates the following chain of events inevitably leading to parental notice: (1) the notified physician or physician's delegate must report the abuse to the local welfare or law enforcement agency within twenty-four hours, Minn. Stat. § 626.556(3)(a),(3)(e); (2) if the minor declares that she is or was being abused by a parent, the welfare agency must conduct an immediate assessment of the situation, Minn. Stat. § 626.556(10)(a); (3) unless the agency obtains a court order it *must* notify the parent "no later than the conclusion of the assessment or investigation" that the interview took place, Minn. Stat. § 626.556(10)(c);[47] and (4) once the parent learns that he is the subject of a child abuse investigation, he may obtain access to the agency's records, Minn. Stat. § 626.556(11).

The records prepared when a report of abuse is filed may contain a reference to the minor's pregnancy,[48] particularly if

47 Minn. Stat. § 626.556(10)(c) gives the *latest* date the agency must notify the parent. The agency has the discretion to inform the parent of the interview, or otherwise initiate contact with the parent, as soon as it wishes.

48 Susanne Smith, director of the guardian ad litem program in Hennepin County, who acted as guardian for 200 minors who went through the bypass, J.A. 231, testified:

(*Footnote continued*)

she was impregnated by her father.[49] In such situations, the young woman's parents learn of her pregnancy and her abortion decision, despite invocation of the abuse exception.[50] As the district court found, "notification to government authorities [as required by Minn. Stat. § 626.556] creates a substantial risk that the confidentiality of the minor's decision to terminate her pregnancy will be lost." 21a.

4. Subdivision 2 Fails To Provide A Way For Emancipated Minors To Avoid Notice To Both Parents.

Subdivision 2 provides that "no abortion operation shall be performed upon an unemancipated minor" in the absence of written notice to both of her parents. 1a. There is no definition of emancipation in the statute, however, and no other statute in Minnesota contains one. For this reason, throughout the five years in which the notice and bypass scheme operated, emanci-

> What I have heard from teenagers that I have specifically asked, as well as the clinics, when the [abuse] situations have occurred, is that the teens do not want this reported . . . . I think some teenagers are so fearful of their parents' reaction that they don't want this reported and would rather go to court than have it reported which would mean that their parents would find out that they were pregnant and planning to have an abortion.

J.A. 233.

49 Intrafamilial sexual abuse is, unfortunately, an all too common occurrence. According to a report by the Minnesota Department of Human Services, in 1986 there were 1665 reported cases of sexual abuse of young women between the ages of nine and 17. Exhibit D, *infra* at A-19-22. The corresponding numbers for the years 1985 and 1984 were, respectively, 1777 and 2099. *Id.* According to one study with a sample of 930 women, 16% reported at least one experience of intrafamilial abuse before the age of 18, and 12% had been sexually abused by a relative before the age of 14. Russell, *The Incidence and Prevalence of Intrafamilial and Extrafamilial Abuse of Female Children*, in Handbook on Sexual Abuse of Children 19, 25 (L. Walker ed. 1987). *See also* n.33, *supra*.

50 Although the statute mandates that the identity of the reporter be confidential, Minn. Stat. § 626.556(11), parents do, in fact, learn who reported the abuse. For instance, Paula Wendt testified, "I have gotten angry phone calls from parents who are furious because they find out I reported a problem in their family . . . ." J.A. 117-18.

pation became a factual issue to be resolved during the judicial bypass proceeding. B.P. 34. J.A. 230-31. In the absence of the judicial bypass option, minors who believe they are emancipated would have no defined or expeditious method for insuring their exemption from mandatory two-parent notice.

First, the standards for emancipation are themselves unclear. Minnesota courts have "had but few occasions to discuss and legally define an emancipated minor," *In re Fiihr*, 289 Minn. 322, 325, 184 N.W.2d 22, 25 (1971), and have noted "the inexactitude with which the term is used." *In re Sonnenberg*, 256 Minn. 571, 576, 99 N.W. 2d 444, 446 (1959). Moreover, emancipation "is to be determined largely on the peculiar facts and circumstances of each case," *Streitz v. Streitz*, 363 N.W.2d 135, 137 (Minn. Ct. App. 1985), and is "ordinarily a question for the jury." *In re Fiihr*, 184 N.W.2d at 25, quoting 39 Am. Jur. Parent and Child § 64. "[E]mancipation may be complete, partial, conditional, absolute or limited as to time or purpose." *In re Sonnenberg*, 256 Minn. at 576, 99 N.W.2d at 447-48 (footnote omitted).[51]

Second, there is no expeditious procedure in Minnesota for obtaining a judicial declaration of emancipation. Indeed, absent Minn. Stat. § 144.343(6), it appears that a minor would have to initiate an action under the Minnesota Uniform Declaratory Judgment Act, Minn. Stat. ch. 555 (1988), presumably against the minor's parents, *see Taubert v. Taubert*, 103 Minn. at 247, 114 N.W. at 764 (1908) (emancipation involves surrender of control by parent),[52] in order to obtain a court order of emancipation. Such an action would have to proceed

51 The effect of complete emancipation is to give the minor "his time and earnings and gives up the parents' custody and control, and in fact works in absolute destruction of the filial relation." *Lufkin v. Harvey*, 131 Minn. 238, 241, 154 N.W. 1097, 1098 (1915) (citation omitted). In order for complete emancipation to occur, a parent must surrender "the right to the services of his minor child, and also the right to the custody and control of his person." *Taubert v. Taubert*, 103 Minn. 247, 249, 114 N.W. 763, 764 (1908) (citations omitted).

52 *See also* Minn. R. Civ. P. 19.01 (all persons must be joined in whose absence complete relief cannot be accorded).

in accordance with the Minnesota Rules of Civil Procedure.[53] The time consumed by such a process would delay many minors until far beyond the time when it would be permissible to perform an abortion.

Finally, a minor would have no choice but to seek such a court order because, if she asserted she was emancipated, but was unable to produce a written instrument of emancipation,[54] any person who performed the abortion would risk prosecution. This is because Minn. Stat. § 144.343(5) requires written evidence of compliance to avoid liability. 2a-3a. No prudent physician or clinic providing abortions would go forward with an abortion simply based upon a minor's representation that she was emancipated.

In sum, a minor who believes she is emancipated would be forced either to notify her parents or, alternatively, to engage in a lengthy judicial proceeding against her parents, without counsel, and without a guarantee of expedition or confidentiality in order to obtain a declaration of emancipation. Elimination of the judicial bypass would thus destroy the purported exception for emancipated minors contained in subdivision 2.

II. MINNESOTA'S MANDATORY TWO-PARENT NOTICE REQUIREMENT CANNOT BE JUSTIFIED AS A MEANS OF PROTECTING A PARENTAL RIGHT TO KNOW.

A. Biological Parents Have No Constitutional "Right To Know" About Their Daughter's Abortion Decision.

Defendants, recognizing that the decisions of this Court have never endorsed a blanket requirement of two-parent notification, nevertheless seek to sustain subdivision 2 on the ground

53 The Rules allow 20 days after service of the Summons for service of an answer; the time to answer is automatically extended if a dismissal motion is made. Minn. R. Civ. P. 12.01.

54 "A minor may be emancipated by an instrument in writing, by verbal agreement, or by implication from the conduct of the parties." *Lufkin v. Harvey*, 154 N.W. at 1098 (citation omitted).

that Minnesota is protecting the "constitutionally based" right of Minnesota parents to be informed of their daughters' abortion choice.[55] *See, e.g.*, B.C-P. 24, 33. The right proffered by the state as a justification for the challenged law is, ironically, asserted in opposition to the arguments of parent-plaintiffs herein, the only parents who are party to this case.

Defendants do not cite a single decision of this or any other court recognizing such a right. They rely instead for support on *Meyer v. Nebraska*, 262 U.S. 390 (1923), *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), *Prince v. Massachusetts*, 321 U.S. 158 (1944), *Stanley v. Illinois*, 405 U.S. 645 (1972), and *Wisconsin v. Yoder*, 406 U.S. 205 (1972). These cases, however, fail to

55 Rather than being "constitutionally based," defendants' "right to know" theory appears to be derived from the antiquated common law rule requiring parental consent to medical procedures performed on minors. Of course, such a common law doctrine is insufficient to justify infringement of a constitutional right and has, in any event, been modified by many states—including Minnesota—to reflect the modern view that many minors are mature enough to consent on their own, and that the health interests of the minor may outweigh the parental authority interests. Minn. Stat. § 144.343(1). For example, many states give mature minors the right to consent to medical treatment. Statutory "maturity" has been accorded minors who are married, active in the armed services, living independently, etc. These statutes are listed in Exhibit F to this Brief, *infra* at A-26.

The common law rule requiring parental consent was never itself based on a "right" of parents but on the now archaic judgment that adolescent minors are incompetent to consent on their own behalf. *See* Brief *amicus curiae* of American Psychological Association, *et al.*, in No. 88-1125. But even under common law, parental consent requirements, the consent of one parent was sufficient. *Bonner v. Moran*, 126 F.2d 121, 122 (D.C. Cir. 1941). Indeed, a custodial parent, as a consequence of sole custody, has sufficient authority to consent to medical treatment for her children. *See, e.g.*, Uniform Marriage and Divorce Act, § 408(a) and Comment (1974) (general rule that custodial parent "may determine the child's . . . health care" is "designed to promote family privacy and to prevent intrusions upon the prerogatives of the custodial parent at the request of the non-custodial parent").

establish that which defendants advocate.[56] Indeed, the right which lies at the core of these cases is a right against interference with "the private realm of family life which the state cannot enter." *Prince*, 321 U.S. at 166.[57] It is a right of the family as against the state, not a right of parents as against the rights of their children.[58]

56 Cases more on point than those cited by defendant make clear that there is no such "right to know." *Doe v. Irwin*, 615 F.2d 1162 (6th Cir.), *cert. denied*, 449 U.S. 829 (1980) *accord Gillick v. West Norfolk and Wisbeck Area Health Authority*, 3 All E.R. 402 (H.L. 1985). In rejecting a constitutional right of parents to know their children have received contraceptives based on *Meyer*, *Pierce*, *Yoder*, and *Prince*, the Sixth Circuit explained why these cases are not controlling. "There is one fundamental difference between all the cited cases and the present one. In each of the Supreme Court cases the state was either requiring or prohibiting some activity [of parents]." 615 F.2d at 1168. Furthermore, the absence of parental involvement legislation does not, as defendants claim, constitute a veto over parental rights because:

> [t]here is no requirement that the children . . . avail themselves of the services offered by the Center and no prohibition against the [parents] participating in decisions of their minor children on issues of sexual activity and birth control. The [parents] remain free to exercise their traditional care, custody and control over their unemancipated children.

Id.

57 Characterizing this right, at least one court of appeals stated: "[w]e now hold that this constitutional interest in familial companionship and society logically *extends to protect children from unwarranted state interference with their relationships with their parents.*" *Smith v. City of Fontana*, 818 F.2d 1411, 1418 (9th Cir.) (emphasis added), *cert. denied*, 108 S. Ct. 311 (1987).

58 These cases did not involve a conflict between the authority of parents and the rights of children; rather, they were attempts by the state to interfere with inter-familial decisionmaking. The Court in *Yoder*, for example, specifically disavowed any balancing of parents' and children's interests:

> Our holding in no way determines the proper resolution of possible competing interests of parents, children, and the State in an appropriate state court proceeding in which the power of the State

Moreover, in *Yoder*[59] the Court stated in no uncertain terms that even the traditional interest of parents in guiding their child is limited by the child's interest in health and safety:

> To be sure, the power of the parent, even when linked to a free exercise claim, may be subject to limitation under *Prince if it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.*

406 U.S. at 233-34 (emphasis added). The Court upheld parental power only because it found that the accommodation of the Amish religious beliefs "will not impair the physical or mental health of the child,[60] or result in an inability to be self-

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is asserted on the theory that Amish parents are preventing their minor children from attending high school despite their expressed desires to the contrary.

406 U.S. at 231; *see also id.* at 237 (Stewart, J., concurring) ("This case in no way involves any questions regarding the right of the children of Amish parents to attend public high schools, or any other institutions of learning, if they wish to do so."). Not one of these cases suggests that a state is obliged to legislate to protect parental "rights" or that a state would be constrained by due process from depriving parents of their alleged rights by, for example, passing laws to safeguard confidentiality in health care such as Minn. Stat. § 144.343(1) and others listed in B.P. Exhibits C and D. Rather, these cases indicate that in instances where there is no demonstrated harm to the child the state may not interfere with parental authority. Yet, when there is a demonstrated harm to the child, even parental authority may be blocked by the state. *Prince*, 321 U.S. at 168-69.

59 In *Yoder*, the Court was faced with a conflict between the state's strong interest in educating minors through age 16 and the Free Exercise rights of the Amish community. The presence of the Free Exercise claim strengthened any independent parental interests in the upbringing of children and led to a decision in favor of parental authority and against the government. As the Court noted, "where nothing more than the general interest of the parent in the nurture and education of his children is involved, it is beyond dispute that the State acts 'reasonably' and constitutionally in requiring education to age 16 . . . ." 406 U.S. at 233.

60 The Court was quite clear in *Yoder* that there was no demonstrated harm to the child in the record: "This case, of course, is not one in

supporting or to discharge the duties and responsibilities of citizenship, or in any other way materially detract from the welfare of society." *Id.* at 234.[61]

Far from establishing a constitutional "right to know" in favor of estranged or non-custodial parents, these cases shed constitutional doubt on a statute which, like subdivision 2, invades "the private realm of family life," *see Prince*, 321 U.S. at 166, in a manner which seriously threatens the health and safety of minors. *See* discussion regarding harm to minors in Point I(B), *supra*. The statute interferes with the freedom of parents to structure sharing, responsibility and privacy with their adolescent daughters, *see, e.g.*, 117a-118a, and with the ability of single parents to control communication, association, and the flow of personal information to the minor's other parent regardless of whether divorce, separation, remarriage or previous abuse has occurred.[62] This sort of interference in the ability of a parent to control family relationships in accordance with the child's best interests is precisely what is prohibited under *Meyer*, *Pierce*, *Prince*, *Stanley* and *Yoder*. "Protecting [such intimate family] relationships from unwarranted state interference . . . safeguards the ability independently to define one's identity that is central to any concept of liberty." *Roberts v. United States Jaycees*, 468 U.S. 609, 619 (1984) (citations omitted). Contrary to defendant's arguments, a statute like

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which any harm to the physical or mental health of the child or to the public safety, peace, order, or welfare has been demonstrated or may be properly inferred." *Id.* at 230 (footnote omitted).

61 This Court's decision in *Parham v. J.R.*, 442 U.S. 584 (1979), is in accord. While the statute upheld in that case permits parents to exercise control and authority over their children, the Court established stringent procedural safeguards to ensure that the parent acts in the minor's best interests. *Id.* at 606-07. The parent has the burden of persuading an impartial medical fact-finder of the need for the commitment and the decision of that fact-finder is subject to mandatory periodic review. *Id.* at 607.

62 The single parent plaintiffs in this case are mostly divorced and several cited fear of abuse as the reason for not wanting to re-involve an absent parent. *E.g.*, J.A. 181, 277-79.

Minnesota's which compels minors and their single parents to communicate private information to an estranged second parent may in fact violate, rather than protect, parents' constitutional rights.[63]

B. The "Right To Know" Upon Which Minnesota Relies Does Not Justify The Lines Drawn In The State's Statutory Scheme.

Minnesota not only asks this Court to create a constitutional right and to sustain subdivision 2 as a means of protecting that right, but it also asks this Court to ignore the conspicuous selectivity with which it invokes the right.

For example, minors in Minnesota are given specific statutory protection for confidential pregnancy tests, pregnancy counseling, and prenatal care, including tests and treatment that may be risky for the fetus, as well as for childbirth surgery, where necessary. Minn. Stat. § 144.343(1). Married minors and

63 For example, "[f]reedom of association . . . plainly presupposes a freedom not to associate." *Jaycees*, 468 U.S. at 623. Infringements on the right not to associate must be justified by a compelling state interest that cannot be effectuated by less restrictive means. *Id.* Recently, this Court quoted *Jaycees* approvingly:

> . . . the Court has concluded that choices to enter into and maintain certain intimate human relationships must be secured against undue intrusion by the State because of the role of such relationships in safeguarding the individual freedom that is central to our constitutional scheme.

City of Dallas v. Stanglin, 109 S. Ct. 1591, 1594 (1989) (quoting *Jaycees*, 468 U.S. at 617-18). Of course, the association embodied in marriage, and the corresponding decision not to associate embodied in divorce, are accorded special constitutional protection as well. *Zablocki v. Redhail*, 434 U.S. 374, 383-87 (1978) ("reaffirming the fundamental character of the right to marry"); *Boddie v. Connecticut*, 401 U.S. 371, 376-77, 382 (1971) (indigent women must "be afforded an opportunity to go into court to obtain a divorce"). Subdivision 2 effectively compels minors and single parents to associate with divorced or estranged spouses with whom, as the facts of this case show, they have chosen to break off all relations. *See* 31a (large percentage of minors using bypass were accompanied by or had voluntarily notified one parent and went to court to avoid having to notify the other biological parent).

those with children can consent to all medical care for themselves and their children. Minn. Stat. § 144.342 (1988). Minnesota guarantees minors the right to make these important medical decisions without notification of parents despite the fact that for teenagers, pregnancy, childbirth and motherhood pose far greater risks, both physical and psychological, than abortion. *See* B.P. 11-13.[64] Under this statutory scheme, for example, a minor could in fact refuse to consent to medical treatment even if she were informed that the treatment was vital to the continued survival of her fetus. "At the heart of that situation, as with abortion, is a decision-involving the life or death of the fetus. Yet under this statutory scheme, the minor girl is considered competent to make one decision but not the other." *In re T.W.*, No. 74,143, slip op. at 23 (Fla. Oct. 5, 1989) (Ehrlich, C.J., concurring specially).

The irrationality of Minnesota's asserted justification of its statute is further illustrated by the fact that the "right to know" theory would vitiate other valuable, though unrelated, legislative initiatives regarding confidentiality. *See generally* statutes listed in B.P. Exhibits C and D. Minnesota teenagers are currently guaranteed confidentiality in a wide variety of

64 Defendants imply that forced parental notification of a minor's pregnancy is not necessary because the parents will eventually learn of the impending birth. This assumption, however, is not necessarily true. For example, in Liberty, N.Y., a 17-year-old who left her baby in the woods after giving birth managed to keep her pregnancy hidden from her parents. According to the *Sullivan County Democrat*, a local newspaper:

> Apparently, the girl had hidden her pregnancy from everyone except her boyfriend, and had given birth to the child at about 6 a.m. on Thursday, July 13. Her mother and stepfather were reportedly home with their daughter at the time of birth, but were unaware of what was going on.
>
> According to reports, the girl waited until 2 p.m. when her parents had left the apartment, and then she wrapped the child in a sheet, put him in a box, and took the child, who she thought was stillborn, out into the woods and left him there.

Gillow, *Mother Released from Jail: Abandoned Baby on Way to Recovery*, Sullivan County Democrat, July 21, 1989 at 1A, 16A.

areas: communications with psychologists[65] or psychiatrists,[66] confessions to members of the clergy,[67] and communications with attorneys[68] are all instances in which minors have been given by statute the right to be free from unauthorized disclosure of their private deliberations and decisions. It is a weak interest indeed which defendants assert so selectively.

The only inference which can be drawn from this legislative picture is that the state had in mind a purpose other than protecting some alleged parental "right to know" when it enacted the statute. In fact, the district court found that one of the legislature's motives for enacting Minn. Stat. § 144.343(2)-(7) was the "desire to deter and dissuade minors from choosing to terminate their pregnancies." 25a. Contrary to defendants' assertion, *see* B.C-P. 4 n.2, substantial support for this finding can be found not only in the statements of witnesses testifying

65 Minn. Stat. § 595.02(1)(g) (1988) ("A registered nurse, psychologist or consulting psychologist shall not, without the consent of the professional's client, be allowed to disclose any information or opinion based thereon which the professional has acquired in attending the client in a professional capacity . . .").

66 Communications with psychiatrists are protected by the provision concerning licensed physicians, Minn. Stat. § 595.02(1)(d) (1988) ("A licensed physician . . . shall not, without the consent of the patient, be allowed to disclose any information or any opinion based thereon which the professional acquired in attending the patient in a professional capacity . . .").

67 Minn. Stat. § 595.02(1)(c) (1988) ("A member of the clergy or other minister of any religion shall not, without the consent of the party making the confession, be allowed to disclose a confession made to the member of the clergy or other minister in a professional character . . . ; nor shall a member of the clergy or other minister of any religion be examined as to any communication made to the member of the clergy or other minister by any person seeking religious or spiritual advice. . . ."). The statute makes no distinction based on the age of the person seeking advice.

68 Minn. Stat. § 595.02(1)(b) (1988) ("An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty . . .").

before the legislative committee,[69] but also in the statements of legislators who debated passage of this law.[70] This desire to deter abortions is, however, a patently improper legislative purpose. *Thornburgh v. American College of Obstetricians and Gynecologists*, 476 U.S. 747, 759 (1986).

To sustain Minnesota's law based on a theory which represents, in truth, a thinly-veiled hostility to abortion rights for minors, would be to open the door to a host of disingenuous legislative enactments mandating parental involvement in minors' decision-making. The cost of keeping parents informed

69 Statements made to the Minnesota Senate Committee on Health, Welfare and Corrections by both proponents and opponents of the proposed legislation highlight that the measure was designed to deter abortions. A lobbyist for Minnesota Citizens Concerned for Life stated that her group supported the bill because "we are convinced that it will save at least some lives . . . . We believe, many parents, if given the opportunity, will help their daughters continue her [sic] pregnancy . . ." (statement of Maurice [sic] Rosenberg). *See* Exhibit C, *infra* at A-14, A-15. Another witness, who opposed the legislation, echoed the belief that the intended purpose of the act was "accomplish[ing] the desire of cutting down on the number of abortions that are preformed [sic] in this state." (statement of Robert McCory, Administrator of the Midwest Health Center for Women). *See* Exhibit C, *infra* at A-16.

70 One of the Act's most outspoken proponents in the Minnesota Senate, Senator Menning, stated on the Senate floor that it could "save lives," or deter abortions. *See* Exhibit B, *infra* at A-8. A sponsor of the Human Life Amendment, Senator Menning repeatedly referred to abortion as the "taking of life" and attempted to sway other state senators with graphic descriptions of the abortion procedure ("Those suction devices pull those babies limb from limb and they don't even kill them before time."). *See* Exhibit B, *infra* at A-12. In a discussion regarding the number of judicial bypass procedures the proposed statute would necessitate, Senator Menning asked, ". . . how many lives do you think it [the bypass procedure] could possibly save?" Senator Stern agreed that the purpose of this statute was to discourage abortions:

> [W]hat we're talking about here is a strong desire to prevent abortions. So I don't think we should continue to fool ourselves and the general public or the courts that that isn't our intent. I think a quick review of the tapes today makes legislative intent very obvious . . . .

See Exhibit B, *infra* at A-12-13.

would be unacceptably high and would swallow entirely the independent rights of minors. That cost—both the physical harm to minors from unwanted pregnancies and the loss of constitutional rights—must not be condoned by this Court.

CONCLUSION

Cross-Respondents respectfully request this Court to affirm the judgment of the Eighth Circuit Court of Appeals that Minn. Stat. § 144.343(2) is unconstitutional.

Respectfully submitted,

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APPENDIX

Exhibit A

Excerpts of Trial Testimony of Dr. Paul Gunderson
March 12, 1986

CROSS-EXAMINATION

[2464] * * *

BY MS. BENSHOOF:

Q: Looking at Exhibit 35, you drew this up or your staff did?
A: That is right, uh-huh.
Q: Looking at the average gestational age which is on Exhibit 35, do you have any opinion today about the average gestational age reported there and its correlation, if any, to the parental notification law?
A: Do I have an opinion?
Q: Yes.
A: Yes.
Q: What is that opinion?
A: The opinion is that there appears not to be a correlation.
Q: Is that because in 1980, 1981, 1982, and 1983 the average gestational weeks are about the same?
A: Correct.
Q: Okay. Now average means taking all minors of gestational ages 8 weeks to 20 weeks, adding it together and dividing it by the number, isn't that correct?
A: Yes, or whatever the gestational age was that was reported by their physician, if it was less than 8 weeks.
Q: So when there is an average there are people at either [2465] end and it all averages out, is that correct?
A: Yes, yes.

The distribution spans a continuum as you have mentioned.

Q: So distribution changes do not always relate to average, is that correct? Let me rephrase the question, there can be a change in distribution with the averages staying the same, isn't that correct?

For example, people could go from 12 to 18 and other people could go from 14 to 18 and the average would be the same?

A: Yes, so long as both movements occurred simultaneously.
Q: Right.
A: Yes.
Q: You have testified that you are familiar with a national trend to earlier gestational ages, is that correct?
A: That is right.
Q: And you also testified that you are familiar with the national studies showing that when new facilities open, or when people have to travel less, there is less delays [sic], isn't that correct?
A: That is correct.
Q: Now are you familiar with the fact that in March 1981 an abortion clinic opened in Duluth, Minnesota, and in October 1981 an abortion clinic opened in Fargo, North Dakota?
[2466] A: Yes, we do know about those, uh-huh.
Q: Well, let me give you a hypothetical as an expert, okay?

Since you are testifying about this law, you know how this law operates, isn't that correct?
A: That is correct.
Q: Now let's presume for a hypothetical, and I think this is accurate, that not all minors are affected by this law.

Let's say that out of 100 minors 35 would tell both parents before the law and 35 would tell them after the law so there would be no effect of the law on some minors.

Let's also assume that there is a trend to lower gestational ages for those minors because of the national trend of increased knowledge and because of the opening of two facilities in 1981.

Let's also assume, and I think that in 1982 less than 50 percent of the minors were using the court system, more are now.

Let's assume in 1982 because of the two new facilities and because of the national trends, 35 minors out of 100 got their abortions one week earlier and these are the ones unaffected by the law because they would tell their parents anyway.

35 minors who had to go to court and who were anxious about making the decision got their abortions one week later than they would have without the law.

Now assuming that those two phenomena happened the [2467] average gestational weeks would still be the same, isn't that correct, one week of 35 cancels out one week of 35?
A: That is correct.

MR. GALUS: Excuse me, counsel, I would object to the factual premises of these hypotheticals unless those facts are in the record.

Plaintiffs have rested.

THE COURT: I think for the purposes of postulating means from averages, is what, as I understand, you are getting at?

MR. GALUS: If the question is limited to an explanation of what the possible difference between a mean and distribution are I withdraw my objection.

But if it is positive on any premise that those facts are part of the record—

THE COURT: There are no facts such as that in the record.

MS. BENSHOOF: Well, Your Honor—

THE COURT: Well, there is a fact that there is a new clinic in Fargo and a new clinic in Duluth.

MR. GALUS: My reference was to the assumption in the hypothetical, a certain group would have gotten it earlier and a certain group would have gotten it later.

MS. BENSHOOF: Assuming those two assumptions an average would cancel out then, wouldn't it?
[2468] THE WITNESS: That is right.

BY MS. BENSHOOF:

Q: But looking—
A: The average would remain the same.
Q: I am sorry, I am sorry. The answer would remain the same?
A: That is right.
Q: But that would not mean that for 35 of those 100 minors there was not a burden of delay, isn't that correct?
A: That is right.

Q: Now you also testified that you had two other bases for your opinion that there was no effect of the statute and one was comparing married minors with unmarried minors, is that correct?

A: The testimony that I believed in that regard was focused on substantiating the fact that the average gestation, the average gestational age of minors was fixed as was entered in Exhibit 35 and what I was trying to suggest was that I, in an effort to be sure that there weren't some unwanted or some unexplained major differences, used two tests in essence to test for the stability of the average gestational week as specified there on the first line for 1983, 1982, et cetera.

Q: But why would one compare married with unmarried minors?

A: The reason for doing that is sort of rooted in the premise that the married minor may have different patterns of **[2469]** behavior with respect to seeking an abortion as opposed to an unmarried minor.

Q: And do you have an opinion on that premise?

A: No, no, just simply aware of the fact that that has appeared here and there in terms of conversations among the reproductive epidemiologists at the CDC and in my conversations with them.

THE COURT: Were you comparing—was it minors you were comparing, married versus the emancipated?

THE WITNESS: Yes.

THE COURT: Or unemancipated?

THE WITNESS: That is right, minors only.

BY MS. BENSHOOF:

* * *

[2470] * * *

Q: Are you aware of the studies, sociologic-demographic that show the different kinds of minors who are married versus unmarried and that married minors are most passive, delay reproductive seeking behavior and that sort of thing?

A: I am only aware of, frankly, of one study in that area and I am not sure how directly that one addressed the issue, and that is the Bloom (ph) study, et al, here at the University of Minnesota.

Q: Now this is a study by Bloom and Resnick?

A: That is right.

Q: Isn't the result of that study that minors who are married and have children are more passive, less future-oriented, and delay in seeking medical help?

A: If my memory serves me right, I think you are right. I don't have it in front of me, I confess, and I am working from memory on that one.

Q: So if I am right, as you think I am, then what we are comparing here are apples and oranges because if Minnesota married minors have these characteristics that would already lead them to delay their gestational ages at the time of **[2471]** abortion they might very well come out the same as other minors seeking abortion who are delayed because of the law, isn't that correct? Do you follow me?

A: Yes. I believe I am following you. That is one possible, yes, explanation, uh-huh.

Q: So if that is a possible explanation, that would be an explanation for your results, that is a different explanation than saying the parental notification law has no effect, is not that true?

A: Yes. Again that could be one logical extension of the explanation, yes.

Q: Okay. So let's go onto [sic] your third basis for your opinion and that was—I am not quite sure what it was, if you could explain it again; I think you were comparing resident minors to all other minors, is that correct?

A: That is correct.

THE COURT: Minnesota 17 and under versus all women, the result is the same is [sic] what I have.

Maybe you had better tell us, Dr. Gunderson, what your third one was.

THE WITNESS: I believe at this point we may be confusing the testimony relative to gestation with complications

because what you have just mentioned, Your Honor, was testimony with respect to complications, at least that is what I recall.

* * * *

[2472] * * *

Q: Okay. Could you explain what you mean by a comparison of resident women and all others?

A: Yeah, the all [sic] others in essence are those women who are not residents of Minnesota; who came into the state for purposes of securing an abortion and based on the analyses I have done from '80 through 1983, it certainly appeared as though the average weeks of gestation for both of those populations were relatively similar.

Q: Well, what does that mean?

A: Well, as I think I indicated at the outset of my testimony, the reason for doing this additional work in essence was to test the stability of the calculation for average gestation in weeks by expanding in theory the test.

[2473] Q: Well, is it your understanding that the law also applies to minors coming in from other states?

A: That is my understanding.

Q: What does your comparison have to do with the parental notification law, forgive me if I am not getting it.

A: The reason for doing that comparison was—was principally an interest in determining the stability of the calculation for average gestational weeks and what I was interested in doing was trying to determine whether as a scientist I could detect levels of instability which would be helpful in explaining in any way the nature of the phenomenon here. I could deduct none.

Q: So that you used the resident versus nonresident comparison only to check your other figures?

A: Uh-huh.

Q: That is not an independent basis for your opinion that the law had no effect.

A: No. The two reasons I gave were reasons because I wanted to check.

Exhibit B*

Excerpts from Transcripts of Senate Debate

May 6, 1981

[14] * * * *

CHAIR: Sen. B [sic]

BERGLAND [sic]: Mr. Chairman and Sen W [sic]. I was sitting last night looking in my crystal ball and I just had a hunch you might offer this amendment today and so we called out to Massachusetts, which has had this particular provision which you are introducing in this part of your amendment, in operation for about two weeks. Now two weeks isn't very long to find out what the kind of history is, but they are having 15-20 cases being referred to the courts per week at the present time. Of course, only two weeks for this new system to operate. None of the cases that have gone before the court under this provision have been denied. So I calculated that out and I figure, at least in their state, they will have somewhere over 1,000 cases per year going to their courts, unless that number increases as people become more aware of how the whole thing works. And I'm just wondering, your amendment calls for a guardian ad lidem [sic] to be appointed for these minors who are in court asking for the court to review their situation. Do you have any idea what the cost of appointing a guardian ad lidem [sic] for an individual is?

CHAIR: Sen. W [sic]

WALDORF: No, Mr. Chairman, I don't.

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* A copy of relevant portions of transcripts of tapes of Minnesota Senate Committee hearings, including the contents of this Exhibit, has been lodged with this Court by counsel for Cross-Respondents.

BERGLAND [sic]: I don't either. But, I am a little bit concerned that if this amendment should pass, which I expect it probably will, and if this should go into effect, which it might, that essentially what is going to happen is that Hennepin and Ramsey County Juvenile Courts are to [sic] ones that are going to end up hearing most of these cases since that is where most of the requests for abortions take place. In spite of the fact that the people who may be coming to Hennepin and Ramsey Counties for those services may not reside in Hennepin or Ramsey County. I'm not sure whether between our two counties, Sen. W [sic], we're going to be able to handle 1,000 or perhaps more than that cases, more cases in the juvenile court per year without increasing the cost to our court. And, I wonder if you've given that any consideration in the drafting of this amendment?

[15] CHAIR: Sen. Menning, is it relevant to the same point here?

MENNING: Yes, Mr. Chairman, will Sen. B [sic] yield?

BERGLAND [sic]: Yes.

MENNING: Sen. B, I think you said your calculations showed maybe possibly 1,000 cases?

BERGLAND [sic]: 1,040, based on two weeks.

MENNING: Sen. B [sic], out of that 1,040 that goes to court, how many lives do you think it could possibly save?

BERGLAND [sic]: Well, based on what's happening in Massachusetts, everyone [sic] of the cases so far has been referred to a doctor for an abortion.

MENNING: So what you're saying, Sen. B [sic], is there are no lives saved?

BERGLAND [sic]: Perhaps the lives of some of the minors who might seek an illegal abortion if they didn't have

that option available to them, but what I'm saying is I think . . .

MENNING: I'm sorry I didn't think I understand that statement. Could you repeat that?

BERGLAND [sic]: I said only the lives of the minors who are using this option rather than seeking an illegal abortion.

CHAIR: Chair recognizes,

(Confusion)

Senator Menning, is this a continuation to your comments before?

MENNING: Mr. Chairman, I guess I'm a little surprised at Sen. B's [sic] comments that—insinuating that possibly this provision goes there's going to be some lives of some teenagers taken? Is that what you're saying?

BERGLAND [sic]: No. I'm not saying that. What I'm trying to say is that through this process, it does not seem apparent, at least at this time, that anyone is going to be denied an abortion, and yet we are going to make people go through this somewhat cumbersome and costly process. And I am a little bit concerned that the cost of that, at least, is not going to be shared by residents across the state, since it will be residents throughout the state that will be using this service.

MENNING: Sen. B [sic], you really—what you're really saying is that the issue is not serious enough with merit to a trial or going to court. Is that what you're saying?

[16] BERGLAND [sic]: Mr. Chairman, Sen. Marion [sic].

* * * *

This provision does not warrant a trial. What it does is it says that the juvenile courts shall review

the situation if the minor requests it. And based on what's been happening under this very same provision, which is in force in Massachusetts, there've been no cases denied by the court.

MARION [sic]: I think we have a serious enough matter here where it perhaps should go to the courts. Sen. B [sic], how is an abortion performed? I'm serious, folks. I think we're dealing with a very serious matter, I hear some groans and I guess I'm wondering . . .

CHAIR: Sen. B [sic]

BERGLAND [sic]: Sen Marion [sic], I have never performed an abortion. I wouldn't have the vaguest idea how you perform an abortion. I have never had an abortion so I'm not an expert on how you perform abortion.

MARION [sic]: Mr. Chairman, members . . .

STERN: Mr. Chairman, point of order.

CHAIR: Sen. [sic] Stern, state your point.

STERN: Mr. Chairman, just to state my point, I'm a little confused by this debate. I thought that we were talking about counseling, love, care and all those good things, and parental notification and all of a sudden I find myself in the middle of a debate revolving [sic] death, and all those other awful things and how do you perform abortions. And I really would like to get back to the debate, Mr. Chairman, and I would call upon you to keep us germaine [sic] while we're going through these amendments.

CHAIR: Your point is well taken, Sen. [sic] Stern.

MARION [sic]: I agree with Sen. [sic] Stern. He clarified exactly what I was thinking. He said, "Now we're

dealing with death." And that's exactly what we're dealing with.

* * *

[30] * * * *

MENNING: Thank you, Senator Stern. Senator Stern, what we're talking about here is the actual killing of life. Now that's what we're talking about. Senator Stern, I asked Senator Bergland [sic] a question. Do you know how an abortion is performed? And I'm giving that the amendment, Mr. Chairman.

STERN: Mr. Chairman, Senator Menning, I can imagine, but I really don't know.

DAVIES: Senator Menning, proceed with your comments.

STERN: Mr. Chairman, Senator Menning, No.

MENNING: All right, Mr. Chairman, Members, I hear a lot of people say, "let's keep to the point." That is exactly what I'm talking about. I'm talking about a 14, 15, 16, 17 year old young girl who's pregnant who, if that person has an abortion, a couple years later will say as a young lady said on radio the other night when I was debating the abortion issue, while she was crying, she said: "I killed my baby." That's what she said, she said, "I killed my baby." And now what you're saying Senator Stern is, don't pass this amendment; just let them make this decision without really thinking about it. Senator Stern, I think you know as well as I do, that most of these abortions now are performed through a suction device. Do you agree, Senator?

STERN: Mr. Chairman, Senator Menning—

DAVIES: Senator from Hennepin, Senator Stern.

STERN: Again, I'm confused. We're talking about this amendment that Senator Waldorf proposed that asks a girl to go to the courts, and you're asking me about abortion, suction devices and all those things?

MENNING: That's right.

STERN: I do not come prepared to argue on this particular amendment.

[31] DAVIES: Senator Stern, if you don't want to yield to the questions, you don't have to if you don't think they're relevant. Senator from Pipestone, Senator Menning.

MENNING: Members of the body, what I'm saying is this, we are dealing with a situation where a minor has to make a decision on whether or not to take the life of her baby. Mr. Chairman, members of the body, this body came in here Monday morning. You know they were all concerned about those dog fights down there. And what I'm saying is this. Those suction devices pull those babies limb from limb and they don't even kill them before time. And this young girl who has to make that decision is going to face that situation someday, and I would support the Waldorf Amendment.

* * *

[43] DAVIES: The Secretary will report the amendment.

SECRETARY: Mr. Stern moves to amend Senate File 287 as follows: Amend the title. Page 1, line 4, after the word "persons" insert "comma, with the intent to prevent abortions."

STERN: Mr. Chairman, members of the committee, what I'm really trying to do here is just a simply [sic] title change because after the debate, I think you'll agree, that what we're talking about here is a strong desire to prevent abortions. So I don't

think we should continue to fool ourselves and the general public or the courts that that isn't our intent. I think a quick review of the tapes today makes legislative intent very obvious, and I would appreciate your affirmative vote for this amendment.

Exhibit C*

Excerpts from Transcripts of Hearings Before Minnesota Senate Committee on Health, Welfare & Corrections

March 24, 1981

[3] * * * *

ROSENBERG: Madam Chairman, members of the committee, my name is Maurice [sic] Rosenberg. I am a chief volunteer lobbyist of Minnesota Citizens Concernced [sic] for Life. In 1973 the Supreme Court struck down the abortion laws in all 50 states and ruled that abortion was to legal [sic] for the entire term of pregnancy. In subsequent ruling [sic], the court has reaffirmed and expanded the right to destroy the unborn. But yesterday the court issued a ruling that at least would allow a restriction on the right of abortionists to perform his or her specialty on minor girls when their parents do not know they are seeking abortion. Today we are asking to approve a law similar to the one upheld yesterday. Why does MCCL support such legislation? First and foremost, we are convinced that it will save at least some lives. When young teens become pregnant they, understandably, are frightened and may make a panic decision to have an abortion because this looks like an easy solution to their problems. In many case, the parents of these teenagers would have been willing and able to offer help and support their daughters in a time of crisis but they do not have the opportunity when abortion clinics are allowed to end the lives of their daughter's child, their grandchild, before they even know that life exists. Under the proposed law, teenagers could still get abortions without their [4] parents consent or even over their objections, but at least their parents would have

* A copy of relevant portions of transcripts of tapes of Minnesota Senate Committee hearings, including the contents of this Exhibit, has been lodged with this Court by counsel for Cross-Respondents.

the important knowledge about their daughter's [sic] plight. We believe, many parents, if given the opportunity, will help their daughters continue her [sic] pregnancy and will make suitable arrangements for the welfare of the baby. Secondly, we are concerned for the health and welfare for [sic] the pregnant teen herself. A frightened girl is in no position to give an accurate medical history to an abortionist, but if her parents at least knew she was planning to undergo an abortion they could provide pertinent information that might be vital in preserving their daughters [sic] own health. Abortion can cause severe health problems in young. Even when they have no preexisting medical condition. For instance, a study conducted by a Florida obstetrician, Dr. Mathew [sic] Bolson, has shown that teens undergoing abortion can suffer both long and short term complications that can effect [sic] their health and reproductive capabilities for the rest of their lives. Many symptoms of such problems may be regarded by the young girl as just part of the abortion aftermath or she may hide these symptoms from her parents so they don't find out about the abortion. In the short term their health and very lives can be put in jeopardy and in the long run they can find that abortion complication [sic] can effect [sic] their ability to have children in the future when they truely [sic] want to have them and are prepared to raise them. Informing parents of their daughter's decision will not eliminate these dangerous aspects of abortion, but at least they will be in a position to help their child if such problems do develop. Opponents of this legislation stress the right of a woman of age to choose abortion and they deny that parents have any right sufficient to interfere with their daughters [sic] decision. What they are saying is that a teenage girl afraid and confused has the sole right to choose the destruction of her own child. We reject this logic and insist that we cannot, must not, attempt to solve the problem of pregnant teenagers by destroying the babier [sic] they carry. We urge you to approve this vital legis-

lation which will have benefits for three generations of Minnesotoans [sic]. Parents, their teenage daughters and their unborn children. Thank you for this opportunity to speak before you. Are there any questions?

* * * *

[15] * * *

MCCORY: My name is Robert McCory. I'm the administrator of the Midwest Health Center for Wômen in Minneapolis. Next week we are opening a clinic in Duluth. I've assisted since 19___ the provision of abortion care for some 30 thousand women in this state and I've learned some things from my experience in doing this, but I do not think that this piece of legislation you have before you will accomplish the desire of cutting down on the number of abortions that are preformed [sic] in this state. Doctor Sumerdorf has suggested that it will delay some procedures too far and cause problems when some parents discover their children are pregnant and try to force them to have abortions. Those of us in the provision of health care for our patients who seek abortion *encourage* parental involvement. We see the importance that parents do become involved in these decisions. At Midwest we're committed to giving parents information about what their children are doing. We conduct courses and programs on such topics as parents as sex education [sic]. We think its [sic] important to do this and we think its [sic] important for the patient to bring her parents to the clinic to be with her at the time she has the abortion which to us is more important than to send the parents a notice that your youngster is having an abortion. We ask our patients to bring somebody with them to the clinic. Often it is a parent, but it could be an older brother or sister. From 40-50% of our patients do call their parents but they generally tell only one parent and its [sic] generally the mother. While we do believe we should involve parents in these decisions we do know that there are a small number of cases, which Doctor

Sumerdorf just pointed out, in which the patients [sic] cannot advise her parents what she is preparing to do. In some instances they will tell them later. In many instances they know it would be damaging to their already shaky relationship to expose them to the fact that they've been sexually active. I can recall in years past of [sic] young women telling me how, their [sic] parents in one case, locked her in the attic of her house with blankets on the windows so the rest of the neighbors wouldn't see their shame. Or another young woman who was locked in the basement as a prisoner because her parents thought that the rest of the neighborhood found out she's pregnant and bring shame on the family [sic]. Both of these youngsters escaped and they did seek abortion care and this was at a time [16] that it was illegal and went out of the county. At our clinic we require young people to have parental consent or family consent of some kind if they're 15 or younger. There are very few patients 13, 12 or younger than that. 22 last year. If the woman is 15 or younger we ask her and we will not do the procedure unless she brings someone else from her family. It may be a parent and it usually is, but it also may be even a grandparent or an aunt or uncle. Providers of this kind of care are not willy nilly trying to capture patients to do abortions. We at our clinic have never done an abortion on a patient against her will. We should really call this the, if you are being cynical, the abortion business aid bill because at present we subsidize, that is we provide a time payment for 40% of the patients we see. We let them pay for their procedures on time. I know many of the patients I talk to I've told them "why don't you tell your parents?" In almost every instance when they tell their parents their parents come back with them to the clinic and see that they have proper medical care. We are finding that large numbers of young women often helping with their sisters and brothers who provide abortion care [sic]. We provide a fair number of free procedures, but 40% of them pay for their procedure on time. I think the cate-

gory that this is really aimed at is the 16 and 17 year old young women because that is the big people [sic] who are sort of on their own. Its [sic] this group we think its [sic] detrimental to notify both of their parents that an abortion is pending. We urge you to defeat this kind of legislation because we think it will produce really serious disaster [sic] among many of the families in this state. Thank you.

Exhibit D*

Excerpts from Child Maltreatment Report
1985-86

Published by the Minnesota Department of Human Services

[22] *Reported Sexual Abuse*

Females were two to seven times more likely to be reported as sexually abused than males. One of the reasons for this large difference is the department collects data only on those reports of sexual abuse in which child protection is required by law to respond, primarily intrafamilial child sexual abuse. The statistics below do not reflect reports of child sexual abuse made to law enforcement agencies where social services was not involved.

The substantiation rate for children on sexual abuse reports decreased from approximately 46% in 1984 to 44% in 1985, and increased back to 46% in 1986. In 1985 the substantiation rate for reports of sexual abuse was the same as physical abuse, while in 1986 it was again higher.

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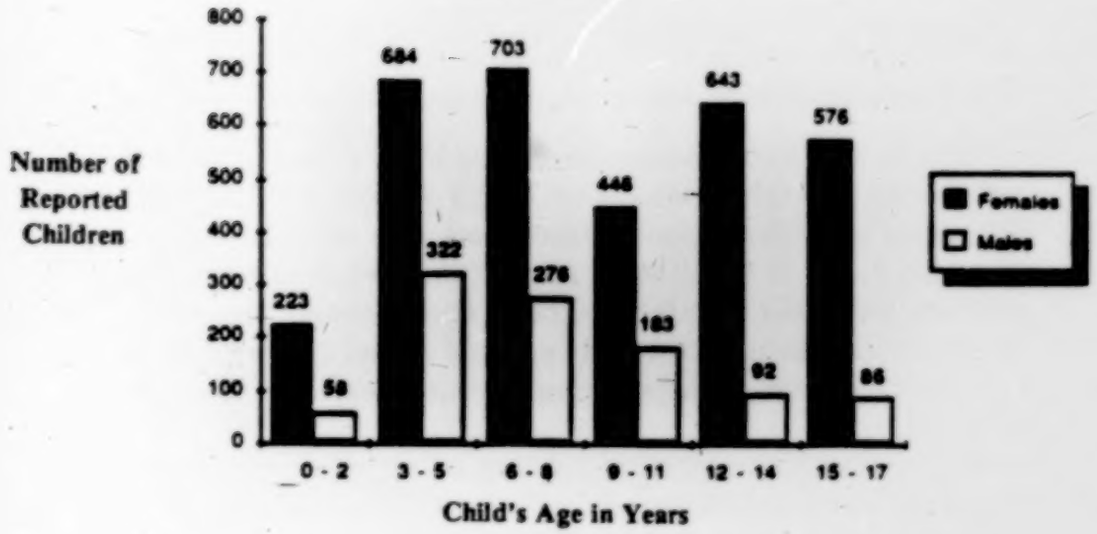
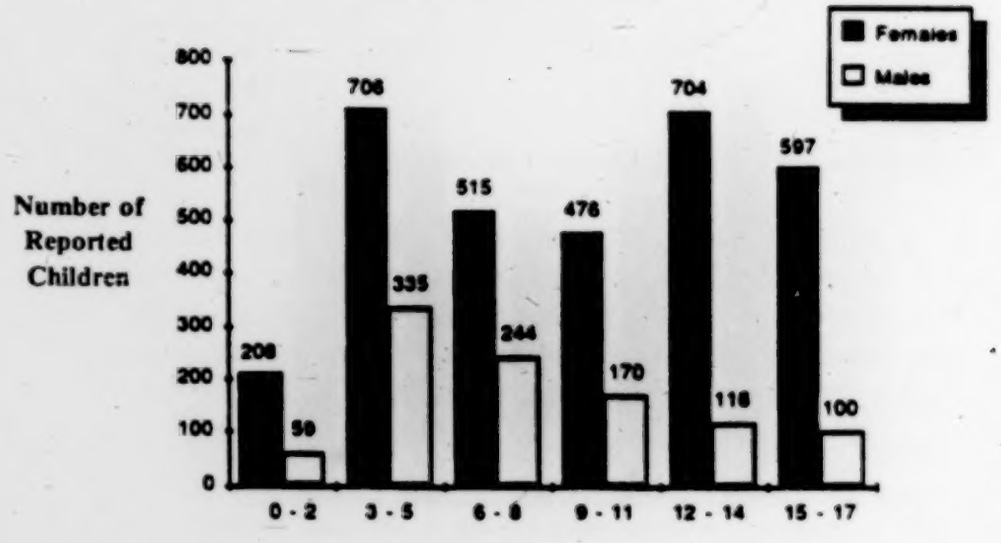
* A copy of this report has been filed with this Court by counsel for Cross-Respondents.

Reported Sexual Abuse in 1986: Number of Children by Age and Gender



Reported Sexual Abuse in 1985: Number of Children by Age and Gender



Reported Sexual Abuse in 1984: Number of Children by Age and Gender

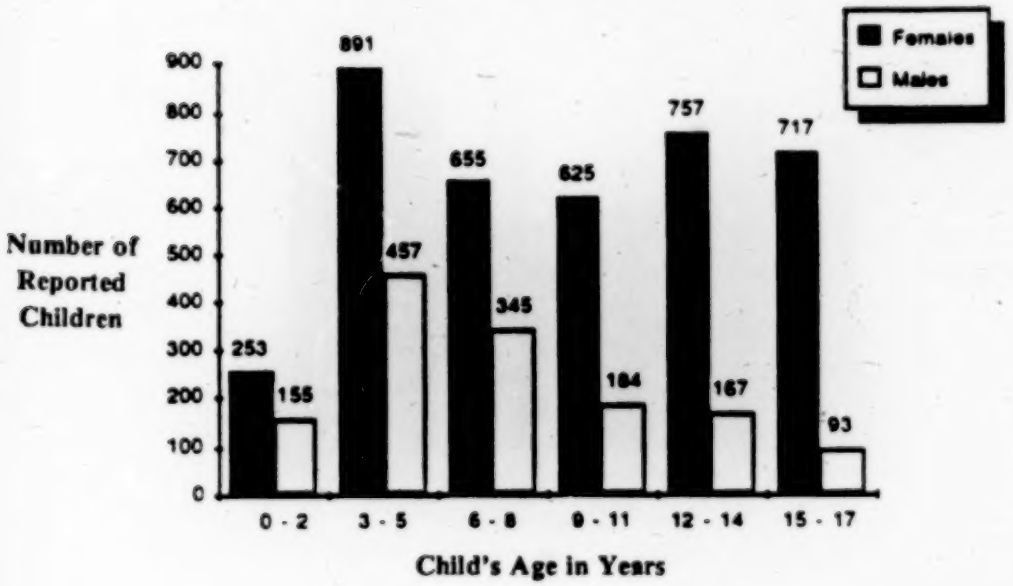


Exhibit E

Excerpts of Trial Testimony of Dr. Vincent Rue
March 12, 1986

CROSS-EXAMINATION

[2333] * * *

MS. BENSHOOF: If there were a criminal statute in California—
A: Uh-huh.
Q: —that required therapists such as yourself, when young women, and you see quite a few, come before you, are pregnant and their parents do not know about it, wouldn't you support a criminal law that would require you not to treat, see or counsel that minor until her parents are notified?

MR. GALUS: Object to that as asked and answered.
THE COURT: Objection overruled, you may answer.
THE WITNESS: I would not agree with such a statute that would impose criminal penalties on a counselor for not notifying parents of an intention for an abortion simply because the counselor is not providing the abortion.

Q: But you testified yesterday that the reason you are in favor [2334] of the statute is that it will lead to parental notice, parental knowledge of the pregnancy, that will lead to involvement, is that correct?
A: Yes.
Q: And if you as a counselor notified a parent, that would lead to knowledge, would it not?
A: Correct.
Q: So the beneficial result you would want from the Minnesota law would also occur from a California law, is that not correct?
A: No, I don't believe so because I will bet you in Minnesota most pregnant teenagers don't seek out a psychotherapist in decisionmaking [sic] process regarding abortion and I know that certainly is the case in California.
Q: So what you are suggesting here is if we—if the goal is to encourage parental notification, then what we should have

are sanctions against psychotherapists who don't involve parents?

A: Well, that would be true, I suppose, and workable to the extent of the goal, if the majority of teenagers went to counselors around the state, but I don't think that is the case.

Q: It would help a little bit, wouldn't it?

A: Well, no, I don't believe so, because—

Q: About how many patients do you see a year who don't involve parents?

[2335] MR. GALUS: Object to the answer being cut off.

THE COURT: Well, I think he should be permitted to answer.

Had you completed your answer or do you want to say more, or have we lost track?

THE WITNESS: I have lost track, but that is okay, proceed.

BY MS. BENSHOOF:

Q: About how many minors do you see a year who end up having abortions who don't tell their parents and you can't convince to tell them?

A: The minority.

Q: About how many?

A: I don't know, but it is a minority.

Q: Twenty-five?

A: I don't know.

Q: You said you saw 50 to 100, a minority, 25, 10?

A: If I saw 50, and 25 didn't, that would be 50 percent, that is not a minority.

Q: Let's say 15-10?

A: A minority.

Q: A minority. If there were a criminal statute it would certainly help that minority because their parents would be told by you and then their families would have the opportunity to get involved, isn't that correct?

[2336] A: For those minority of patients who are pregnant, who through the course of counseling insist that their parents not be involved, their parents would be notified subject to criminal prosecution of the psychotherapist.

Q: And the parents then would have the opportunity to be involved, isn't that correct?

A: They would.

Q: So for that portion of your patients they would be helped by such a law even though you would oppose such a law, isn't that correct?

A: I don't know that they would be helped. I don't know what that word means.

Parents would be notified. It is very possible in those exceptional situations that we could exacerbate the problem.

Q: You mean notification, forced notification would exacerbate the problem?

A: In some exceptional cases, yes.

Q: Well, tell me about this: How would such forced notification exacerbate the problem?

A: In cases where there is very severe dysfunctional communication, threats of violence, very poor family life, it is possible that notification could be harmful both to the adolescent—well, primarily to the adolescent.

Exhibit F

Statutory Definitions of Maturity

I. MARRIED MINORS (27 states):

ALA. CODE § 22-8-4 (1984) (minor who is or has been married may consent to any legally authorized medical, dental, health or mental health services), ALA. CODE § 22-8-5 (1984); ARIZ. REV. STAT. ANN. § 44-132 (1987) (minor who is or has been married may consent to hospital, medical and surgical care); ARK. CODE ADD. § 20-9-602(3) (1987) (married minor may consent to surgical or medical treatment or procedures not prohibited by law); CAL. CIV. CODE § 25.6 (West 1982) (minor who is or has been married may consent to hospital, medical and surgical care); COLO. REV. STAT. § 13-22-103 (1987) (married minor may give consent to hospital, medical, dental, emergency health and surgical care); DEL. CODE ANN. tit. 13, § 707(a)(2) (married minor may consent to any lawful diagnostic, therapeutic or post-mortem procedure, and to the furnishing of hospitalization and other reasonably necessary care in connection therewith); GA. CODE ANN. § 31-9-2(a)(3) (1985) (married minor may consent to any surgical or medical treatment or procedures not prohibited by law); ILL. REV. STAT. ch. 111, para. 4501 (1987) (married minor may consent to performance of medical or surgical procedures by a physician); IND. CODE § 16-8-12-2(2)(c) (Supp. 1987) (minor who is or has been married may consent to his or her own health care); KY. REV. STAT. ANN. § 214185(3) (Baldwin Supp. 1988) (minor who is or has been married may consent to hospital, medical, dental or surgical care for himself or herself); LA. REV. STAT. ANN. § 40: 1299.53(c) (West 1977) (married minor may consent to any medical or surgical treatment or procedures, including autopsy, not prohibited by law); MD. HEALTH-GEN. CODE ANN. § 20-102(a)(1) (1987) (married minor has same capacity as adult to consent to medical treatment); MASS. GEN. L. ch. 112, § 12F (1986) (minor who is married, widowed or divorced can consent to his or her own medical or dental care); MINN. STAT. § 144.342 (1988) (married minor may consent to medical, mental, dental and other

health services); MISS. CODE ANN. § 41-41-3(c) (Supp. 1988) (married minor may consent to medical or surgical procedures or treatments not prohibited by law); MO. REV. STAT. § 431.061 (1986) (married minor may consent to any medical or surgical treatment or procedures not prohibited by law); MONT. CODE ANN. § 41-1-402(1)(a) (1987) (minor who is or has been married may consent to medical or surgical care or services by hospital, clinic or physician); NEV. REV. STAT. ANN. § 129.030(1)(b) (Michie 1986) (minor who is or has been married may consent to examination and treatment, other than sterilization, provided by physician, hospital, board of health, or health officer, as long as he or she understands the nature and purpose of treatment, its probable outcome and voluntarily requests it); N.J. STAT. ANN. § 9:17A-1 (West 1976) (married minor may consent to medical or surgical care); N.M. STAT. ANN. § 24-10-1 (1986) (minor who is or has been married may consent to hospital, medical and surgical care); N.Y. PUB. HEALTH LAW § 2504(2) (McKinney 1985) (any person who is or has been married may consent to medical, dental, health and hospital services); OKLA. STAT. ANN. tit. 63, § § 2601(c) and 2602(A)(1) (West 1984) (1981) (married minor may consent to health services, except abortion or sterilization); PA. STAT. ANN. tit. 35, § 10101 (Purdon 1977) (minor who is or has been married may give consent to medical, dental, and health services); R.I. GEN. LAWS § 23-4.6-1 (1985) (any married person may consent to routine emergency medical or surgical care); S.C. CODE ANN. § 20-7-270 (Law. Co-op. 1985) (married minor may consent to any lawful diagnostic, therapeutic surgical or postmortem procedures); VA. CODE ANN. § 54.1-2969(E) (1988) (minor who is or has been married may consent to any surgical and medical treatment, except sterilization); WYO. STAT. ANN. § 14-1-101 (Michie 1989) (minor who is or has been married may consent to health care treatment to the same extent as an adult).

II. MINORS WHO ARE PARENTS (27 states):

ALA. CODE § 22-8-5 (1984) (any minor who has borne a child may consent to any legally authorized medical, dental, health or

mental health services for self and child); ALASKA STAT. § 09.65.100(3) (1983) (minor who is the parent of a child may consent to medical and dental services for self and child); ARK. CODE ANN. § 20-9-602(2) (1987) (any minor parent may consent for any medical or surgical treatment or procedure not prohibited by law for his child, but illegitimate father cannot consent for children solely on the basis of parenthood); COLO. REV. STAT. § 13-22-103(3) (1987) (minor parent may consent to hospital, medical, dental, emergency health and surgical care for his or her child); CONN. GEN. STAT. § 19a-285 (1987) (minor who has borne a child may consent to medical, dental, health and hospital services for his or her child); DEL. CODE ANN. tit. 13, § 707(a)(4) (1981) (minor parent may give consent for his or her child for any licensed medical, surgical, dental or osteopathic practitioner or hospital or clinic to perform diagnostic, therapeutic, or postmortem procedures and any hospitalization or other necessary care in connection therewith); FLA. STAT. § 743.065(2) (1987) (unwed minor mother may consent to medical or surgical care or services for her child by hospital, clinic or physician); GA. CODE ANN. § 31-9-2(a)(2) (1985) (minor parent may give consent to any surgical or medical treatment or procedure not prohibited by law for his or her minor child); IDAHO CODE § 39-4303 (1985) (consent for furnishing of hospital, medical, dental or surgical care, treatment or procedure to any person who is not then capable of giving such consent as provided in this act or who is a minor or incompetent person, may be given or refused by any competent parent, spouse or guardian); ILL. ANN. STAT. ch. 111, para. 4502 (Smith-Hurd 1987) (a parent who is a minor may consent to performance of medical, surgical or dental procedure upon his or her child); KAN. STAT. ANN. § 38-122 (1986) (minor parent may consent to the performance upon his or her child of medical, surgical or post mortem procedure by a physician); KY. REV. STAT. ANN. § 214.185(3) (Baldwin Supp. 1988) (minor who has been married or borne a child may consent to hospital, medical, dental or surgical care for the child or for himself or herself); LA. REV. STAT. ANN. § 40:1299.53(b) (West 1977) (minor parent may give consent for his or her child to any medical or surgical treatment or procedure, including

autopsy, not prohibited by law); MD. HEALTH-GEN. CODE ANN. § 20-102(a)(2) (1987) (minor parent has the same capacity as an adult to consent to medical treatment); MASS. GEN. L. ch. 112, § 12F (1986) (minor parent may give consent to medical or dental care for herself or himself and his or her child); MINN. STAT. § 144.342 (1988) (minor who has borne a child may consent to medical, dental, mental and other health services for self and child); MISS. CODE ANN. § 41-41-3(b) (Supp. 1988) (minor parent may consent for his or her child to any medical or surgical procedures or treatments not prohibited by law; however, father of illegitimate child cannot consent for child solely on basis of parenthood); MO. REV. STAT. § 431.061(1)(3) (1986) (minor parent may consent to any medical or surgical procedures or treatment not prohibited by law for himself or herself and for his or her child); MONT. CODE ANN. § 41-1-402(a) (1987) (minor who has had a child may consent to medical or surgical care or treatment by a hospital, clinic or physician); NEV. REV. STAT. ANN. § 129.030 (Michie 1986) (minor who has borne a child may consent for herself and for child to any examination and treatment, except sterilization, by a hospital, clinic, or physician, provided she understands the nature and purpose of the treatment and its probable outcome, and voluntarily requests it); N.J. STAT. ANN. § 9:17A-1 (West 1976) (married or pregnant minor may consent for self and children for medical and surgical care or procedures); N.Y. PUB. HEALTH LAW § 2504 (McKinney 1985) (any person who has borne a child may consent to medical, dental, health and hospital services for herself and for child); OKLA. STAT. ANN. tit. 63, § 2602(1) (West 1984) (a minor who has a dependent child may give consent for self and child to health services); PA. STAT. ANN. tit. 35, § 10102 (Purdon 1977) (minor who has been pregnant, borne a child or married may consent to medical, dental, and health services for self and child); R.I. GEN. LAWS § 23-4.6-1 (1985) (minor parent may consent to routine emergency medical or surgical care for his or her child); S.C. CODE ANN. § 20-7-300 (Law. Co-op. 1985) (minor who has been married or borne a child may consent to health services for the child); UTAH CODE ANN.

§ 78-14-5(4)(a) (1987) (minor parent may consent to any health care not prohibited by law for his or her minor child).

III. INDEPENDENT MINORS (11 states):

ALASKA STAT. § 09.65.100(1) (1988) (minor who is living apart from parents and managing own financial affairs may consent to medical and dental services); CAL. CIV. CODE § 34.6 (West 1982) (minor 15 years of age or older and living apart from parents or guardian and managing own financial affairs, regardless of income source, may consent to hospital care or any X-ray examination, anesthetic, or medical, dental or surgical diagnosis or treatment); COLO. REV. STAT. § 13-22-103(1) (1987) (minor 15 years of age or older who is married or living apart from his or her parents and managing own financial affairs, regardless of source of income, may consent to hospital, medical, dental, emergency health and surgical care); IND. CODE § 16-8-12-2(2)(B) (Supp. 1987) (minor at least 14 years of age who is not dependent on a parent for support, is living apart from parents and is managing own affairs may give consent to health care); MASS. GEN. L. ch. 112, § 12F (1986) (minor who is living apart from parents and managing own financial affairs may consent to medical or dental care); MINN. STAT. § 144.341 (1988) (minor who is living apart from parents and managing personal financial affairs, regardless of source or extent of income, may consent to medical, dental, mental or other health services); MONT. CODE ANN. § 41-1-402(b) (1987) (minor who has been separated from his or her parents and is supporting himself or herself may consent to medical or surgical care or services by a hospital, clinic or physician); NEV. REV. STAT. ANN. § 129.030 (Michie 1986) (minor who has been living apart from his or her parents for at least 4 months may consent to any examination or treatment, except sterilization, provided by physician, hospital, board of health, or health officer, as long as he or she understands the nature and purpose of the treatment and voluntarily requests it); OKLA. STAT. ANN. tit. 63, § 2602(A)(2) (West 1981) (minor who is separated from his or her parents and is not supported by them may consent to health services); TEX. FAM.

CODE ANN. § 35.03(a)(2) (Vernon Supp. 1989) (minor who is 16, is living apart from his or her parents with or without their consent, and managing personal financial affairs, regardless of source of income, may consent to hospital, medical, surgical and dental care); WYO. STAT. § 14-1-101 (1989) (minor who is living apart from parents and managing own affairs, regardless of income source, may consent to health care treatment).

IV. MINORS IN ARMED FORCES (five states):

CAL. CIV. CODE § 25.7 (West 1982) (any minor on active duty with any of the armed services may consent to hospital, medical or surgical care); IND. CODE § 16-8-12-2(2)(D) (Supp. 1987) (a minor who is in the military service may consent to his or her own health care); MASS. GEN. L. ch. 112, § 12F (1986) (minor who is a member of the armed forces may consent to medical or dental care); TEX. FAM. CODE ANN. § 35.03 (Vernon Supp. 1989) (a minor on active duty in armed forces may consent to hospital, medical, surgical or dental care); WYO. STAT. § 14-1-101(b)(ii) (1989) (minor in active military service may consent to health care treatment to the same extent as an adult).

V. MINORS WHO HAVE GRADUATED FROM HIGH SCHOOL (three states):

ALA. CODE § 22-8-4 (1984) (minor who has graduated from high school may consent to any legally authorized medical, dental, health or mental health services); MONT. CODE ANN. § 41-1-402(a) (1987) (minor who has graduated from high school may consent to medical or surgical treatment or care); PA. STAT. ANN. tit. 35, § 10101 (Purdon 1977) (minor who has graduated from high school may consent to medical, dental and health services).

VI. MATURE MINORS (three states):

ARK. STAT. ANN. § 20-9-602(7) (1987) (unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment

or procedures may consent); MISS. CODE ANN. § 41-41-3(h) (Supp. 1988) (any unemancipated minor of sufficient intelligence to understand and appreciate the consequences of the proposed surgical or medical treatment or procedures may consent for himself or herself); N.H. REV. STAT. ANN. § 318-B:12a (1984) ("nothing contained herein shall be construed to mean that any minor of sound mind is legally incapable of consenting to medical treatment provided that such minor is of sufficient maturity to understand the nature of such treatment and the consequences thereof").

Exhibit G

Article from The Idaho Statesman, August 23, 1989, and Murder Indictment of Rocky Allen Adams

ADAMS CHARGED WITH MURDER

By David Ensunsa
The Idaho Statesman

PAYETTE—A charge of first-degree murder has been filed against a Fruitland man accused of impregnating and killing his teenage daughter.

Payette County Prosecutor Bruce Birch said his office filed the charge Monday against Rocky Adams, 37, who remained hospitalized in Boise Tuesday night from an apparent suicide attempt.

Adams will appear in court for arraignment when he is able to, Birch said Tuesday.

Adams is accused of with [sic] firing a slug from a .30-caliber rifle into the head of his 13-year-old daughter, Spring, on Aug. 14, at their Fruitland home. He then apparently turned the gun on himself and suffered a bullet wound to the head.

Adams, who was comatose for several days, has been steadily improving at St. Alphonsus Regional Medical Center. Tuesday night, he was listed in fair condition.

Birch said his office is continuing to investigate the shooting. Sheriff Bob Barowsky said his investigation is essentially complete.

"We had to make sure we had all our statements before the charge was filed," Barowsky said. "Once the charges have been filed, we are pretty well finished."

The sheriff declined to comment further on the case, saying he did not want to "try the case in the newspaper."

Officials were still refusing Tuesday to release some findings from Spring Adams' autopsy. After the shooting, family members told The Statesman that Rocky Adams had been consumed with guilt because he had sexually abused and impregnated his daughter.

But officials have declined to say whether the girl was pregnant, adding that such a revelation, if true, could hinder the prosecution.

On Tuesday, Payette County Coroner Robert Bigelow said he did not know whether Adams was pregnant. He said he has had the autopsy report read to him but he hadn't actually seen the report.

"Personally, I don't have knowledge if she was pregnant. I'm not interested in that, because that's not the cause of death," Bigelow said.

A clerk at the Payette County court office said she had no written report of an autopsy on the girl.

The girl, who would have been a sixth-grader this year, had been scheduled to receive an abortion Aug. 15 in Portland, relatives said.

(EXHIBIT CONTINUED ON FOLLOWING PAGE.)

IN THE DISTRICT COURT OF THE
THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF PAYETTE

Case No. CRM: 839

STATE OF IDAHO,

Plaintiff,

vs.

ROCKY ALLEN ADAMS,

Defendant.

CRIMINAL INFORMATION

Pursuant to Idaho Criminal Rule 7, the Prosecuting Attorney of Payette County, Idaho, alleges by this information that:

ROCKY ALLEN ADAMS

has perpetrated a crime against the State of Idaho, to-wit:

MURDER IN THE FIRST DEGREE,
I.C. 18-4001, 18-4002, 18-4003, (FELONY)

committed as follows:

That the Defendant, ROCKY ALLEN ADAMS, on or about the 14th day of August, 1989, in the County of Payette, State of Idaho, did wilfully, unlawfully, deliberately and with premeditation, and with malice aforethought, kill and murder Spring Adams, a human being, by shooting her in the head with a firearm from which she died, which is in violation of I. C. 18-4001, 18-4002, 18-4003, MURDER IN THE FIRST DEGREE, (FELONY).

CRIMINAL INFORMATION—1

DATED this 14 day of September, 1989.

Bruce H. Birch
Prosecuting Attorney